

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

CRIMINAL ACTION NUMBER: 1:17CR51

JAMES L. LAURITA, JR.

Defendant.

**TRIAL - DAY 3**

Proceedings had in the Trial of the above styled action  
on January 31, 2018 before The Honorable Irene M. Keeley,  
Senior Judge, at Clarksburg, West Virginia.

APPEARANCES:

FOR THE PLAINTIFF:

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FOR THE DEFENDANT:

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The defendant was present in person.

Proceedings recorded by stenomask, transcript produced by  
official court reporter.

**LINDA L. BACHMAN, CCR, CVR-M, OFFICIAL COURT REPORTER  
P.O. BOX 969, CLARKSBURG, WEST VIRGINIA 26302-0969  
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**I N D E X**

<b>WITNESS</b>	<b>DIRECT</b>	<b>CROSS</b>	<b>REDIRECT</b>	<b>RECROSS</b>
(For the Defendant)				
James L. Laurita, Jr.	384	410	454	

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P R O C E E D I N G S

(01-31-2018, 9:00 o'clock a.m., defendant present)

THE COURT: Good morning. I'm advised that all the jurors have arrived. I think before we bring them in it's appropriate to hear any motions that the parties may wish to bring.

MR. CARR: Yes, Your Honor. Upon the close of the Government's case, the defendant does make a general motion under Rule 29 for a directed verdict. I do not believe that a rational jury can find the defendant guilty beyond a reasonable doubt. The Government has not presented sufficient evidence of all elements and especially the element of willfulness.

THE COURT: All right. Government?

MR. DOUGLAS: Your Honor, the Government argues that the evidence is sufficient to sustain a conviction under Rule 29 when taken in the light most favorable to the Government.

Your Honor, first of all, starting with the conduit contribution charges which is sort of the heart of the case, Counts Two and Three, I conceptualize these in conduct evidence and intent evidence.

Starting with the conduct evidence, there is sufficient evidence that the defendant caused conduit contributions. The executives identified the defendant as the originator

1 and leader of the contribution program. The executives  
2 testified that they made all these contributions because the  
3 defendant asked them to do so and they would not have  
4 contributed without the defendant's request. The executives  
5 identified Mepco and/or the defendant as the source of the  
6 funding for the contributions through advancements and the  
7 reimbursements. The executives testified that they would  
8 not have contributed without this funding. The executives  
9 denied that this second bonus was compensation to them and  
10 in fact one of the executives testified that when he stopped  
11 receiving the second bonus he did not complain because quote  
12 "it wasn't my money" and of course regarding the conduct  
13 there's also the bank records, e-mails and the Hughes and  
14 Crane spread sheets showing the mechanics of the program.

15 Now, Your Honor, with regard to intent. First of all  
16 there is sufficient evidence for the jury to conclude that  
17 the defendant knew about the individual contribution limits.  
18 In 2010 there's evidence that Bill Raney told the defendant  
19 in an e-mail what the limits were and, Your Honor, I have  
20 exhibit numbers ready if the Court requests any.

21 In 2010 the defendant himself told someone at Allegheny  
22 Energy what the individual limits were.

23 Between 2010 and 2013 we've seen that the defendant  
24 received and approved numerous fundraiser invitations which  
25 specified the individual limits.

1           In addition, we've seen evidence that the defendant  
2 completed contribution forms for his own contributions which  
3 specified the limits.

4           We have heard evidence and seen evidence that the  
5 defendant asked the executives to contribute in amounts  
6 which equaled the limits and the jury could conclude that  
7 simply the use of his employees to contribute shows  
8 knowledge of the limits and how he was limited.

9           Moving on to evidence of the defendant's knowledge of  
10 the prohibition against conduit contributions. First of  
11 all, Your Honor, there is in evidence a contribution form  
12 completed by the defendant for the Tom Smith campaign and it  
13 includes a box checked and a signature and it says in part,  
14 please check here to confirm that no one has advanced you  
15 funds for the purpose of making this contribution and that  
16 no one will reimburse you for it.

17           In addition there are numerous Critz--Mark Critz  
18 fundraiser invitations back and forth in e-mail  
19 correspondence between the defendant and others over nearly  
20 the entirety of the program 2010, 2011 and 2012 at least and  
21 these weren't just junk mail. He was hosting these  
22 invi--these fundraisers. He was approving the drafting of  
23 these fundraisers and those invitations to Mark Critz  
24 fundraisers included language that quote "contributions must  
25 be made from your own funds and funds cannot be provided to

1 you by another person or entity for the purpose of making  
2 this contribution".

3 And then finally with regard to the prohibition against  
4 conduit contributions and his knowledge of that prohibition,  
5 the jury could conclude in the light most favorable to the  
6 Government that the defendant sought to contain information  
7 about the program. It's undisputed that the payments that  
8 funded these contributions were listed in payroll records as  
9 a bonus when the jury could conclude that it was not a bonus  
10 based on all eight executives indicating that it was not  
11 compensation. There's evidence that the defendant did not  
12 ensure that any Mepco business record accurately recorded  
13 the true purpose of the payments as funding political  
14 donations, especially during a time when there was heavy  
15 oversight concerning Mepco's finances.

16 In addition we heard testimony from Karen Hughes about  
17 two rules, she called them, that she was given from the  
18 defendant. One was to not talk with anyone outside the  
19 program about the program. Another was to ask, not tell.  
20 The jury could conclude, based on the fact that the  
21 defendant was all the eight executives' boss. He hired  
22 them. He promoted them. That these weren't truly asks when  
23 they were coming from him.

24 Finally, on this issue, there is evidence that the  
25 defendant did not seek legal counsel of Louis Southworth on

1 the legality of the program, even though he had sought his  
2 counsel on other campaign finance issues. The jury could  
3 conclude, in the light most favorable to the Government,  
4 that means he already knew it was illegal.

5 Moving on to Count Four, the excessive contributions  
6 charge. Based upon the conduit contribution evidence just  
7 outlined, the jury could conclude that the twenty-eight  
8 thousand six hundred dollars in contributions made in the  
9 names of the executives to the McKinley campaign in 2013  
10 were attributable to the defendant as indirect contributions  
11 from him and thus were in excess of his individual  
12 limitation.

13 Finally, Your Honor, the false statement charges, Counts  
14 One, Six, Seven and Eight. Based upon the conduit  
15 contribution evidence, the jury could find that the  
16 defendant caused the FEC reports to be false as to a  
17 material fact, specifically the true force of the  
18 contributions made in the names of the executives.

19 There is evidence that the defendant was aware that  
20 donation information was reported regularly to the FEC,  
21 including the name of the contributor and the amount of the  
22 contribution.

23 In 2010 Bill Raney told the defendant about reporting.  
24 He indicated it is reported in the appropriate cycle for the  
25 individual elections. In 2010, at the beginning and

1 inception of this program, campaigns mentioned these reports  
2 to the defendant in e-mails including quote "the way the  
3 last FEC report ended after your fundraiser, we needed to  
4 record the event at Mepco in this report. Please let me  
5 know the amount and the name of the person.

6 There is evidence from which the jury could conclude  
7 that the defendant was aware that the reports contained  
8 false statements because the defendant knew about the  
9 mechanics of the program, including its funding from Mepco  
10 and he knew that the campaigns believed he was lawfully  
11 raising the contributions which was false.

12 And one last matter with regard to venue, there has been  
13 evidence--first of all we're dealing with 18 U.S.C. Section  
14 2 and the causing theory, that the defendant, as the  
15 originator and controller of this program, was causing all  
16 these things to happen, causing all these offenses and those  
17 actions originated in Monongalia County where Mepco has its  
18 main offices, where Karen Hughes has her main office from  
19 which she was sending the e-mails and many other acts that  
20 the Court has heard occurred in Mon County within the  
21 Northern District of West Virginia.

22 THE COURT: All right. Thank you. Mr. Carr, did  
23 you wish to reply to any of that?

24 MR. CARR: No, Your Honor.

25 THE COURT: All right. Thank you. The Court has



1 heard argument on the Rule 29 motion and concludes that when  
2 the evidence is viewed in the light most favorable to the  
3 Government for the reasons argued by Government counsel  
4 the--all of the counts in the Indictment will go to the  
5 jury. There is sufficient evidence to carry the case to the  
6 jury. The Court denies the motion.

7 Are we finished and ready to go?

8 MR. DOUGLAS: Yes, Your Honor.

9 THE COURT: Mr. Carr, because when the jury comes  
10 back the defendant will have the opportunity to put on a  
11 case in chief, can you advise me at this time whether the  
12 defendant intends to do so and if so who will the first  
13 witness be?

14 MR. CARR: Your Honor, yes we do intend to do so  
15 and the first witness will be Mr. Laurita.

16 THE COURT: All right. Mr. Laurita, as a  
17 defendant, if you intend to testify I need to advise you as  
18 follows. Because you are the defendant in this case you are  
19 presumed to be innocent of all the charges and the burden  
20 remains on the Government at all times to prove each and  
21 every element of each charge against you beyond a reasonable  
22 doubt. Do you understand that?

23 THE DEFENDANT: Yes, Your Honor.

24 THE COURT: All right. Further more, while you  
25 have--certainly have the right to testify, you're under no

1 right to testify because, as I instructed the jury  
2 preliminarily, you have--you do not bear the burden of  
3 proof. You have no obligation to prove anything. It's the  
4 burden of the Government to prove it. Do you understand  
5 that?

6 THE DEFENDANT: Yes, Your Honor.

7 THE COURT: All right. Now have you had the  
8 opportunity to meet with your attorneys and to discuss these  
9 rights?

10 THE DEFENDANT: Yes I have.

11 THE COURT: All right. And have you, of your own  
12 free will and with knowledge of your rights and of the  
13 potential consequences, made a decision to take the stand  
14 and to waive your right to remain silent and to testify?

15 THE DEFENDANT: Yes I have, Your Honor.

16 THE COURT: All right. Do you have any concerns at  
17 all that you're being harassed or pushed or in any way  
18 having your will overborne in making this decision?

19 THE DEFENDANT: No, ma'am, not so ever.

20 THE COURT: All right. Thank you. You feel fully  
21 informed?

22 THE DEFENDANT: Yes, ma'am.

23 THE COURT: Thank you. You may be seated.  
24 Counsel, is there anything else we need to take up before I  
25 bring the jury in?

1 MR. DOUGLAS: No, Your Honor.

2 MR. CARR: No, Your Honor.

3 THE COURT: All right. Thank you. We can bring  
4 the jury in.

5 (Jury in 9:13 a.m.)

6 THE COURT: Good morning, Ladies and Gentlemen,  
7 welcome back. I certainly hope your travels this morning  
8 were not as challenging as yesterday morning and we  
9 appreciate your--your timeliness.

10 As you may recall yesterday the Government rested its  
11 case in chief and I advised you that when you returned this  
12 morning the defendant, although under no obligation  
13 whatsoever to put on any evidence, would have an opportunity  
14 to do so should he choose so I will turn to one of the  
15 defendant's attorneys, Mr. Carr, and ask if the defendant  
16 intends to put on a case in chief?

17 MR. CARR: We do, Your Honor.

18 THE COURT: All right. You may do so at this time.

19 MR. CARR: Your Honor, at this time the defense  
20 calls James L. Laurita, Jr.

21 THE COURT: All right. Mr. Laurita, would you  
22 please approach the Clerk who will administer the oath to  
23 you before you take the witness stand.

24 THE CLERK: Thank you. Please have a seat in the  
25 witness stand. The witness is James L. Laurita, Jr.

Laurita - Direct

1 L-a-u-r-i-t-a.

2 THE COURT: Mr. Laurita, you've heard me tell the  
3 other witnesses to speak in a loud, clear voice and that you  
4 move the microphone, adjust it to your needs. Mr. Carr, you  
5 may proceed.

6 MR. CARR: Thank you, Your Honor.

7 DIRECT EXAMINATION

8 BY MR. CARR:

9 Q. Jim, did you consider the money that was given to the  
10 campaigns by your executive team to be your individual money  
11 or Mepco money?

12 A. It was their individual money.

13 Q. Why did you think that?

14 A. They had all agreed. We discussed the concept. They  
15 had all agreed that they wanted to do this and thought it  
16 was the right thing to do, so based on those principles they  
17 were agreeable to the program so based on those principles  
18 it was their money at that point.

19 Q. To your knowledge did any of the execs have any other  
20 source of income--significant source of income other than  
21 the funds they received from Mepco?

22 A. Not to my knowledge, no.

23 Q. Jim, during the time that the program, as it has come to  
24 be referred to in court--during the time period in which the  
25 program was in existence, did you ever have any concerns

Laurita - Direct

1       whatsoever with the legality of the program?

2       A.   No.   None.   Not whatsoever.

3       Q.   Jim, how long have you been involved in the coal  
4       industry?

5       A.   My whole life.

6       Q.   Were your parents in the coal business?

7       A.   Yes they were.

8       Q.   Did you work in the mines as a kid?

9       A.   Yes.   I pretty much grew up around the mines.   My dad  
10      started taking me to the mines when I was very young  
11      man--not a young man.   Shoot.   It was probably--I grew up  
12      there essentially when I was a kid and so I spent a lot of  
13      time on weekends going out with my dad to the mines and  
14      particularly in the summers.   I spent the summers working at  
15      the mines as a child and as a young adult.

16      Q.   Where were the mines?

17      A.   The mines were in the Maidsville, West Virginia area  
18      which is about six miles north of Morgantown.

19      Q.   What type of work did you do in the mine?

20      A.   Well my dad had me starting out, with my brother as  
21      well.   We did odd jobs around the mines, cleaning up, that  
22      sort of thing and one of the things that he had taught us to  
23      do was pick slate off the belt.   Coal would come out of the  
24      mine on a conveyor belt and it would have rock within the  
25      coal and so we were given a slate picker's job where we

Laurita - Direct

1 would pick rock out of the coal as it came out of the mine  
2 and so that's one of the things we did during the  
3 summertimes especially when we were much younger.

4 Q. Did you go to college?

5 A. Yes, I did.

6 Q. Where at?

7 A. I went to West Virginia University, Mining Engineering  
8 Program there.

9 Q. Did you get a degree?

10 A. Yes. I got a Mining Engineering Degree.

11 Q. After you graduated, did you return to the family  
12 business?

13 A. Yes I did. I--basically--I worked underground for four  
14 years while I was going to college. I had, you know, worked  
15 up--increasing basically skills at the mines my dad would  
16 teach us and then I worked underground for four years and  
17 that gave me a really good leg up on trying to understand  
18 mining application, that sort of thing and so once I got out  
19 of college my dad wanted me to be the company mining  
20 engineer so I became the company mining engineer as soon as  
21 I graduated.

22 Q. Did you continue to work your way up, so to speak,  
23 through the company?

24 A. Yes I did. Probably over, you know, a fifteen year  
25 period, gained increasing responsibilities in production,

Laurita - Direct

1 sales, that sort of thing, manage preparation plant, modify  
2 preparation plant, just increasing--all aspects. It was a  
3 small company so you learn basically all aspects of the  
4 business and my dad gave me increasing responsibilities  
5 as--the older I got.

6 Q. Jim, during the trial we have obviously heard of the  
7 company Mepco. Could you please tell the jury how that came  
8 to be formed?

9 A. In--around 1987 time frame--I am not sure of the exact  
10 year, my father had purchased a mine. It was called the  
11 Sierra Mine. It was an underground mine and he was going to  
12 hire a contractor to contract mine that mine and I asked my  
13 father if--if I could be the contractor and he considered it  
14 and he said yes. He said, however, I want you to have your  
15 sister and brother go in with you and I said that's fine,  
16 yeah. So we formed Mepco at that time and we were a  
17 contract miner for my father.

18 Q. What position did you hold there?

19 A. I was the Mine Superintendent and I continued to stay on  
20 kind of part time working for my father as well as the  
21 company engineer.

22 Q. Did there come a time when Mepco was approached by the  
23 investors for a company called GenPower?

24 A. Yes. In about 2001 a company named GenPower, which is a  
25 power plant developer, approached us. They were going to

Laurita - Direct

1 build a coal fired power plant in the Maidsville area and  
2 wanted to have Mepco to be considered as the coal supplier  
3 for that coal fired power plant.

4 Q. How close was that power plant going to be to Mepco?

5 A. Essentially adjacent to it.

6 Q. Was there something that GenPower wanted in order to  
7 guarantee--the investors for GenPower wanted in order to  
8 guarantee that investment?

9 A. Yes. After we had, you know, spent some time with them  
10 and they had--they had started permitting the project,  
11 putting all the pieces together for the project, and once  
12 they had all those pieces together and they were going out  
13 for financing, one of the investors that was going to invest  
14 money in the power plant said that--that essentially they  
15 weren't going to invest the money in the power plant unless  
16 they had a guaranteed fuel supply and so--and by that what  
17 they meant is they wanted to own Mepco. They wanted  
18 assurance before they put the money down in a power plant  
19 that they owned Mepco and so they approached us and said in  
20 order for this to go through they have to buy Mepco and the  
21 family chose at that time to--to sell the company.

22 Q. What year was that?

23 A. That was in 2007.

24 Q. How much was it going to cost, to your knowledge, to  
25 build Longview?



Laurita - Direct

1 A. Longview was going to be about a two billion dollar  
2 power plant project.

3 Q. Were you involved in the West Virginia Coal Association  
4 at this time?

5 A. Yes, I was.

6 Q. And exactly what is that organization?

7 A. The West Virginia Coal Association is an association  
8 that represents mining companies and suppliers for mining  
9 companies throughout the state.

10 Q. How would you describe the level of your political  
11 activity before 2008?

12 A. Almost nonexistent. Very little.

13 Q. Did you make campaign contributions?

14 A. Probably some, but it would've been very little.

15 Q. Did you host fundraisers?

16 A. No.

17 Q. Any particular reason why?

18 A. Didn't see the need to. Wasn't interested.

19 Q. Did that--rephrase that. Do you recall the election of  
20 2008?

21 A. Yes, I do.

22 Q. Did you contribute to either Barack Obama or John  
23 McCain?

24 A. No I did not.

25 Q. Did you campaign for them?

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1 A. No I did not.

2 Q. Did you--did you perceive the coal industry having any  
3 concerns with the candidates?

4 A. There was some concern because Barack Obama had said on  
5 a few occasions that if he became president he was going to  
6 bankrupt the coal industry. There was some concern over  
7 that but most of us, including me, didn't--didn't think much  
8 of it, didn't think, you know, how a president on his own  
9 would be able to destroy an industry so we really weren't  
10 that concerned about it.

11 Q. Did that change after the election?

12 A. Very much so.

13 Q. Why?

14 A. Within days or a week or two, I don't remember; it was a  
15 very short time after he took office, he formed essentially  
16 new management in the EPA and they revoked the largest and  
17 newest, most modern surface mine permit in the state history  
18 of West Virginia. It was called the Spruce Fork Permit and  
19 it was unprecedented. No one had ever seen a federal  
20 government rescind a mining permit.

21 Q. Did other concerns develop?

22 A. Yeah. Right on the heels of that a bill was introduced  
23 into Congress. It was called the--I believe it was the  
24 Markey Waxman bill. Essentially it was going to put new  
25 emissions limits on all coal fired generation that in

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1 essence would just kill the industry. The power plants  
2 weren't going to be able to comply and even Longview Power  
3 Plant, a brand new, modern power plant, which would be like  
4 a Nissan compared to the 57 Chevys that were out there, it  
5 was efficient, modern, almost no emissions. By the time it  
6 was constructed, within a few years afterwards, it wouldn't  
7 have been able to comply with these new requirements so  
8 Longview would've--it would not have been able to comply  
9 right after it was constructed.

10 Q. What would that mean for Mepco?

11 A. It would have been the end of Mepco. If Longview didn't  
12 run, Mepco wasn't going to be able to run.

13 Q. We have heard about a meeting with the execs that  
14 you--the executive team that you had in March of 2010. Did  
15 that meeting happen?

16 A. Yes, sir, it did.

17 Q. What prompted that meeting?

18 A. Several things. Just the--what we were seeing as the  
19 onslaught on the industry and the--we needed basically--the  
20 elected officials or people that are campaigning, needing  
21 support that they basically will come back, some of the  
22 things that we were seeing in Washington and needed their  
23 support. The Coal Association was promoting it, that  
24 executive teams get more active and the CEO of GenPower and  
25 the CEO of Longview and was the Chairman of Mepco's board,

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1 which he was essentially my boss, had met at very early  
2 March, first part of March and basically asked all the  
3 executive teams of Longview, of GenPower and Mepco to get  
4 more politically active. So based upon all those, thought  
5 about it. I approached my management team; had a meeting  
6 and I said this is what we're facing. We're facing an  
7 onslaught like we've never seen before in this industry and  
8 is this the right thing to do? Should we get involved  
9 politically? Is this the right thing to do and do you guys  
10 agree with that? And the consensus coming away from that  
11 meeting is, yes, that's the right thing to do. We need to  
12 do it and so we started.

13 Q. You mentioned the executives of GenPower and Longview,  
14 did they tell you how to become more politically active?

15 A. No they did not.

16 Q. What was the relationship between the executive team  
17 amongst each other and you as the president? How did the  
18 team operate?

19 A. We operated a true team. I spent probably nine months  
20 with each one of them before I hired them. We spent a lot  
21 of time putting together a very good team. I mean it was  
22 the best executive team I had ever seen. Cared about each  
23 other. Supported each other and we--I did not rule with an  
24 iron fist. They were not bobble heads. We came together as  
25 a team. Did we have differences? Yeah, we had differences

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1 but at the end of the day we agreed as a team and we managed  
2 as a team. We were--we were essentially friends as well,  
3 became very close friends.

4 Q. As you were putting this together did you decide to do  
5 something regarding their compensation?

6 A. Yes I did.

7 Q. And what was that?

8 A. Well I managed the team--we were--2010, 2009 were  
9 difficult years.

10 Q. Was Longview behind schedule?

11 A. Yes. Yes. Longview was behind schedule. It was a year  
12 behind schedule. Their anticipated--they had  
13 a--a--essentially a fixed component to their salary and then  
14 they had a variable component based upon sales and  
15 production. Longview was way behind and so that slowed down  
16 Mepco's ramp up and growth so their compensation was behind.  
17 They were way under their peer group of those with similar  
18 jobs and similar responsibilities in the industry and so for  
19 them to become more politically active, I needed to raise  
20 their compensation package so they could do that.

21 Q. How did you decide to do that?

22 A. I chose the issue, what's called a discretionary bonus.

23 Q. Why did you do that as opposed to increase their  
24 salaries--their base salaries?

25 A. GenPower had--the investors in GenPower, Longview and

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1 Mepco had the companies for sale. They were actively  
2 discussing sale of the companies to two different companies  
3 at the time and it's a big no-no to start adjusting  
4 executive teams base salaries during a time when you're  
5 trying to sell a company. That's very much frowned upon.  
6 That's a big no-no. You don't do that sort of thing and so  
7 I chose to give a discretionary bonus instead of raising  
8 their base compensation.

9 Q. How soon was it expected that Mepco would be sold?

10 A. We were expecting to be sold within a year.

11 Q. Would and increase in the base salary be viewed as  
12 temporary or permanent?

13 A. A base salary would be viewed as a buyer as a permanent  
14 because if a new buyer came in and the base salaries were  
15 much higher and they wanted a completely different  
16 compensation program with metrics, and that's typical. In  
17 executive they have metrics. They have various levels of  
18 compensation and so if you raise their base salary much  
19 higher and then a new buyer comes in and says well I don't  
20 like that base salary. I'm going to lower that base salary,  
21 that would've caused a lot of friction and a lot of upset,  
22 hurt feelings within the management teams if you try to take  
23 that away so we tried to avoid that.

24 Q. Did you task, as we have heard, Karen Hughes with in  
25 essence keeping track?

Laurita - Direct

1 A. Yes, I did.

2 Q. What instructions did you give her?

3 A. Just basically told Karen that, you know, to issue the  
4 bonus and we want to be assured that they didn't get hurt  
5 and by that I meant that their bonus was well above anything  
6 that they were going to be spending on campaign  
7 contributions. I didn't want them to get hurt.

8 Q. Was it supposed to be a one-for-one?

9 A. No.

10 Q. And were the payments--the bonus payments--how did you  
11 envision those being paid, after every contribution, in  
12 bulk, what was the plan, if there was one?

13 A. It definitely wasn't one-for-one. Was going to issue a  
14 bonus so they could afford to be able to give and it was  
15 going to be a large bonus so it gives them the ability  
16 financially they could afford to give and then it was also  
17 grossed up for taxes and they also got 401(k) compensation  
18 on that, so they got an extra five percent that went into  
19 their 401(k).

20 Q. To your knowledge was that placed into the payroll  
21 system just like all other compensation of the execs?

22 A. Yes.

23 Q. And did you understand that it was called a bonus  
24 because that was the only way to put it in the payroll  
25 system?

Laurita - Direct

1 A. To the best of my knowledge, yes.

2 Q. Did you tell Karen Hughes anything about whether  
3 communications regarding a particular candidate or an amount  
4 was supposed to be mandatory or not?

5 A. I gave her instructions that I did not want anybody to  
6 feel like anything was mandatory or feel like they were  
7 uncomfortable with it so--and in particular we had  
8 discussions, debates from time to time on particular  
9 candidates where some had, you know, would prefer one  
10 candidate over another. So I didn't want anybody to feel  
11 uncomfortable with any request so I said make sure that  
12 nothing is demanded because that's not the way this is going  
13 to work and stuff so it has to be voluntary and everybody  
14 had to be open and agreeable to that.

15 Q. Where did you normally get the candidates that you  
16 recommended donations to give to? Where did you identify  
17 them? Who--

18 A. We were a member--Mepco was a member of the West  
19 Virginia Coal Association which we talked about a few  
20 minutes ago, but also is a member of the Pennsylvania Coal  
21 Association. Pennsylvania Coal--because Mepco had mines in  
22 Pennsylvania and West Virginia both and so we relied upon  
23 them to give us guidance on who to give, who to support and  
24 who not to support, who were the friends of the industry so  
25 to speak so we relied heavily on the Pennsylvania and West



Laurita - Direct

1 Virginia Coal Association for that.

2 Q. You mentioned that at times there were disagreements  
3 between the executives as to a particular candidate. Do you  
4 remember an example?

5 A. Yeah. Yeah. There was a lot of debate during the 2010  
6 race for the general election. Mike Oliverio was running  
7 against David McKinley; David McKinley being a Republican  
8 and Mike Oliverio being a Democrat. Mike Oliverio was a  
9 State Senator for many years, a staunch advocate of the coal  
10 industry and the West Virginia Coal Association wanted to  
11 back him. They knew of David McKinley but not that well and  
12 so the Coal Association made their endorsement,  
13 recommendation to back Mike Oliverio and a couple of the  
14 execs, particularly Eric Grimm and Brian Osborn, didn't  
15 agree with that. They thought that we ought to support  
16 David McKinley instead and I said, you know, they're both  
17 great candidates, do what you think is best. Support who  
18 you want to support.

19 Q. Do you know who they eventually gave to?

20 A. To the best of my knowledge they gave to--to McKinley.  
21 They may have given some to Oliverio. I don't know. I just  
22 left it up to them at that point.

23 Q. Are you aware that Government Exhibit 52, the  
24 spreadsheet that Karen was keeping indicates that during  
25 that time period 2010 Gary Grimm did not give a donation to

Laurita - Direct

1 Mike Oliverio?

2 A. I just don't remember. What I told you is what I  
3 remember so I don't know any specifics of what--I just don't  
4 remember any specifics.

5 Q. By the way did you know Karen was keeping a spreadsheet?

6 A. No I did not.

7 Q. You mentioned disagreements and discussions amongst the  
8 executive team, Jim. Did you ever consider or to your  
9 knowledge give any perception to any member of the executive  
10 team that there would be any retribution whatsoever if they  
11 chose not to participate?

12 A. Absolutely not. I didn't manage that way.

13 Q. At any time did any member of the management team give  
14 you any indication at all that they considered there was  
15 anything wrong with the program or that they did not want to  
16 participate?

17 A. Never. Not once.

18 MR. CARR: May I approach, Your Honor?

19 THE COURT: You may.

20 BY MR. CARR:

21 Q. Jim I'm showing you what has been marked and admitted as  
22 Defendant's Exhibit A. Can you read that?

23 A. Do you want me to read it out loud?

24 Q. You don't have to read it out loud, but can you see it?

25 A. Yes, I can see it on the screen.

Laurita - Direct

1 Q. And this was--Karen Hughes has told us about this  
2 document. It says the yellow highlights are those donations  
3 I have not yet received from you. If you intend to make  
4 those donations, please fill in the amount and return to me.  
5 And then asks, are you and Lory both making a fourteen  
6 hundred dollar donation to McKinley. Did you--and care may  
7 not be the right word but you can insert your own, about  
8 whether the executives followed all of the suggested  
9 donations that were given to them?

10 A. No. I mean we operate as a team and they were relying  
11 upon me to make suggestions. If they wanted to do something  
12 else, they're free to do so.

13 Q. Did you instruct Karen to ensure that all of these  
14 donations were made?

15 A. I told her that we don't want to force anything on  
16 anybody or make anybody feel uncomfortable so, no, I  
17 never--I never pushed her or pushed anybody.

18 Q. Do you recall her even telling you that donations had  
19 not been made?

20 A. No.

21 MR. CARR: Retrieving Defendant's Exhibit A.

22 BY MR. CARR:

23 Q. Jim, did you give Karen any instructions regarding  
24 discussing the additional bonus outside the executive team?

25 A. I'm sorry. Could you ask that question again?

Laurita - Direct

1 Q. I apologize. I was walking in and out of the mic. Did  
2 you give Karen any instructions regarding talking about the  
3 second bonus, as it's come to be called, outside of the  
4 executive team?

5 A. Just told her like all compensation, all bonuses, that  
6 we don't want to be broadcasting any kind of bonuses, so we  
7 keep all the bonuses with respect to the management team,  
8 confidential.

9 Q. Does that include their base salaries?

10 A. Yes.

11 Q. Does it surprise you that Suzanne Crane said that she  
12 didn't even know, even though she was your personal  
13 assistant--executive assistant, I should say, what the--what  
14 your salary was or the executive team salary?

15 A. No, she wouldn't no.

16 Q. Was that information kept pretty tight?

17 A. Yes. Yes it was.

18 Q. Did you ever make any effort to hide what the second  
19 bonus was for?

20 A. No. No. None whatsoever.

21 Q. Did you ever instruct anyone to deny its existence?

22 A. No I did not.

23 Q. During this time period between 2010 and 2013, Jim, how  
24 would you characterize the contact you had with campaigns?

25 A. Well it was--it was increasing as time went on to some

Laurita - Direct

1 extent. Beforehand--before we started getting involved and  
2 giving contributions it was virtually no contact but after  
3 we started giving contributions, you know, we started having  
4 more and more contact and we wanted to--we wanted to contact  
5 them. We wanted to have a voice. It was a war on coal. It  
6 was an onslaught like we had never seen before and it came  
7 quickly and the candidates didn't even understand it. We  
8 were having a hard time grasping and understanding it and so  
9 we wanted to spend a lot of time with them, educating them  
10 on the issues and so I encouraged the management team,  
11 encouraged a lot of people in permitting, engineering, to  
12 try to spend as much time with the candidates as possible to  
13 try to educate them as we were learning. It was a dynamic  
14 situation and so we spent as much time as we possibly can  
15 and I encouraged them to do that to educate them as to the  
16 obstacles and the challenges that we were facing at the  
17 time.

18 Q. Did you come to understand that the campaigns were  
19 keeping track of both you and the executive teams donations?

20 A. I come to learn that over time, yes.

21 Q. Did that surprise you?

22 A. I guess initially, yes, but it became common that they  
23 would ping us if they wanted us to give the max, everybody  
24 the max all the time and so, you know, we got--frequently  
25 been asked, were asked consistently to try to give the max

Laurita - Direct

1 so we--so we knew if we didn't give the max, they would ping  
2 us, say, hey can you give some more? Can you give some  
3 more? What can you do to help us?

4 Q. Did--and I believe there's--did they speak with you  
5 about members of the executive team that had not given the  
6 max or not given what they understood to be their quote  
7 unquote "pledge"?

8 A. Yeah, frequently.

9 Q. Would you communicate that on to the executive team?

10 A. No, not always. No. I mean we were inundated with  
11 requests for contributions and you can't give to everybody  
12 all the time and so I didn't pass on all that to the  
13 executive team, occasionally.

14 Q. Did you ever demand that anyone give to a certain  
15 campaign?

16 A. No. Never. Not once.

17 Q. Were there times that candidates or elected office  
18 members spoke to you directly about whether you had given to  
19 them in what amounts or to an opponent?

20 A. Yes. Yes, I have been contacted twice from elected  
21 officials about that.

22 Q. What did they say?

23 A. Well the first one was a veiled threat. The second one  
24 was a direct threat. They--particularly the second one, he  
25 stuck a finger in my face and said you are supporting my

Laurita - Direct

1 opponent and you better not do that anymore. You better  
2 stop. You better support me.

3 Q. During this time period did you also host fundraisers?

4 A. Yes I did.

5 Q. To your knowledge did most of the major coal  
6 operators--coal operators host fundraisers?

7 A. Yes they did.

8 Q. And who were some of those?

9 A. Virtually all of them in the state did. The ones that  
10 I'm most familiar with in our area up here is Consolidation  
11 Coal Company, Alpha Natural Resources at the time and  
12 Alliance. Peabody Coal. There was a number of them.

13 Q. Do you understand one of the reasons why the campaigns  
14 went to you regarding the executive team as well as  
15 collecting at those fundraisers is because they could  
16 collect in batches?

17 A. Yes. I was the representative for our company on the  
18 Coal Association so they would come to the board members of  
19 the Coal Association and approach them about trying to  
20 campaign, you know, raise funds for them.

21 Q. At these fundraisers did you ever see the other coal  
22 company representatives present the campaigns with multiple  
23 checks, bundles of checks?

24 A. Yes. Yes. That was common.

25 Q. Did you know how it was that those companies were

Laurita - Direct

1 running their campaign--their campaign support operations?

2 A. No I did not.

3 Q. At any time did you think there was anything wrong with  
4 your executives' contributions to those campaigns?

5 A. No I did not.

6 Q. Anything unlawful?

7 A. No; not whatsoever.

8 Q. You mentioned that the second bonus was not to be  
9 discussed like--just like all other compensation. Sitting  
10 through the trial here, Jim, you've seen two I believe  
11 e-mails in which Karen Hughes told someone to delete  
12 something. Did you tell her to do that?

13 A. No I did not.

14 Q. Did you know she did that?

15 A. No I did not. Not until preparing for trial, is when I  
16 first saw it.

17 Q. Have you ever told someone to delete something?

18 A. No. Never.

19 Q. And have you ever deleted anything to conceal the  
20 program?

21 A. No. No.

22 Q. You have also seen an e-mail that Karen sent where she  
23 gives a specific dollar amount and says that's not your  
24 money. Did you tell her to say that?

25 A. No I did not.



Laurita - Direct

1 Q. Do you agree with that?

2 A. No I don't.

3 Q. What did you consider the executives' money once it hit  
4 their accounts?

5 A. It was their money.

6 Q. You had Ernst & Young as well as other auditors in the  
7 office, is that correct?

8 A. Yes, frequently. There was an auditor--independent  
9 third party auditor that came in at least annually, if not  
10 more often and they audited all the books and records of the  
11 company. More specifically the last eighteen months that I  
12 was there at Mepco, there was a firm by the name of Alvarez  
13 and Marsaw that came in. Essentially the investors of  
14 GenPower, Longview and Mepco--Longview was going to have to  
15 go through what's called a restructuring. It wasn't able to  
16 pay its bills. It was in financial trouble and so they  
17 hired a professional team to come in and look at everything  
18 under the company. They looked at every dime the company  
19 spent and had six full time people staffed at Mepco looking  
20 at everything we did so it was--and that was continuous  
21 every day, five days a week for a year and a half.

22 Q. Were those second bonuses, to your knowledge, clearly in  
23 the financial records?

24 A. Yes, to my knowledge.

25 Q. Did the second bonus program continue during this time

Laurita - Direct

1 period?

2 A. Yes.

3 Q. Why did it end, the program?

4 A. It became apparent right around May or June of 2013  
5 that--we thought for a while, you know, Longview was going  
6 to go through a restructuring that--essentially that Mepco,  
7 which was a guarantor--the company I ran was a guarantor of  
8 the debt of Longview, was going to get a by. It would not  
9 have to go through a restructuring itself or be drug into  
10 bankruptcy and when it became apparent that Mepco--Longview  
11 was going to file bankruptcy and Mepco was going to have to  
12 file bankruptcy, any kind of discretionary bonuses, it is a  
13 big no-no, you do not give discretionary bonuses to any  
14 executive when you're going to be in bankruptcy, so  
15 that--that's prohibited and so we just stopped it, stopped  
16 giving discretionary bonuses at that time.

17 Q. At the time that you stopped giving discretionary  
18 bonuses, did you have any concern with their legality?

19 A. No; none whatsoever.

20 Q. During the entire duration of the program had anyone  
21 indicated anything that led you to believe that there was a  
22 question as to whether it was lawful?

23 A. No. None.

24 Q. During this time period between 2010 and 2013, what  
25 did--what rules of campaign finance did you understand to

Laurita - Direct

1 be?

2 A. I knew there were individual limits. The campaigns  
3 themselves educated us on that. You could see it in big  
4 bold letters on the flyers, on any of the invitations, but  
5 the campaigns educated us on that because they wanted to try  
6 to encourage people to give to the max so they always told  
7 you what the maximum amount you're allowed to give. I also  
8 knew that--that a company can't write a check in itself to  
9 campaigns and then I knew that--that if Joe blow gave me a  
10 hundred dollars and says I'm going to give you a hundred  
11 dollars and I want you to then give a hundred dollars to Joe  
12 Manchin, I knew that was wrong.

13 Q. You mentioned individual limits. Did at times you even  
14 get that wrong as far as whether you had given too much or  
15 not split it between the primary and general?

16 A. Yes. There was--states--was federal law, state law;  
17 they're all different and it was dynamic. It changed all  
18 the time so sometimes I got it wrong as to what--in West  
19 Virginia there might be a thousand dollar limit. In the  
20 federal it might be twenty-four or twenty-five or  
21 twenty-six. Pennsylvania there are no limits so it was just  
22 a mixed bag and at times it was confusing, so sometimes I  
23 got it wrong too.

24 MR. CARR: May I approach, Your Honor?

25 THE COURT: Yes you may.

Laurita - Direct

1 BY MR. CARR:

2 Q. Jim, I'm showing you what's been admitted as  
3 Government's Exhibit 18-8. The first page is on the screen.  
4 Did you fill this form out?

5 A. Yes I did. That is my printing and that is my  
6 signature.

7 Q. How many, by the way, invitations would you typically  
8 get during this time period from the campaigns, invitations  
9 to fundraisers or to give?

10 A. A lot. I mean hundreds--hundreds. If not coming into  
11 the office, go home at night and routinely in the mail there  
12 were many, many invitations to fundraisers. It's just like  
13 if you give to a charity or you give to some kind of cause  
14 and they kind of hand your name out, next thing you know  
15 you're on everybody's list.

16 Q. What about contribution forms?

17 A. Yes. There were contribution forms typically attached  
18 with most all the invitations.

19 Q. There is a, kind of an affirmation here. Was it your  
20 experience that those varied widely across the contribution  
21 forms?

22 A. I don't think there was any standard or any--yes, they  
23 varied widely and virtually every invitation looked  
24 different.

25 Q. This one says that please check here to confirm that you

Laurita - Direct

1 are at least eighteen years of age, that this contribution  
2 is being made using your personal check or credit/debit  
3 card, not the check or card of an incorporated entity or  
4 another--other person; that no one has advanced you funds  
5 for the purpose of making this contribution, and that no one  
6 will reimburse you for it. Did you--do you--did you believe  
7 at the time between 2010 and 2013 that the second bonus  
8 program violated that rule?

9 A. No I did not believe it violated that rule.

10 Q. Do you now?

11 A. No I do not.

12 Q. Why?

13 A. It's a fundamental difference. I took this as Joe Blow  
14 coming up to me saying I'm going to give you a thousand  
15 dollars; I'm going to give you a hundred dollars, whatever  
16 amount you want to say and then I want you to take a  
17 thousand dollars of your money and give to a candidate.  
18 That's tit for tat, one-on-one. That's the way I took that.  
19 That's not what we did in the program at Mepco.

20 Q. Jim, given that to your knowledge all the executive  
21 compensation came from Mepco, did you think the situation  
22 was any different if you raised their salaries?

23 A. I'm sorry. Could you ask that again?

24 Q. To the extent that you understood that all of the  
25 executives or nearly all of the executives' money came from

Laurita - Cross

1 their employment at Mepco, do you think this situation would  
2 be any different had you increased their base salaries?

3 A. No.

4 MR. CARR: Your Honor, may I have a moment?

5 THE COURT: Yes.

6 (Pause)

7 MR. CARR: Your Honor, I will return Government's  
8 Exhibit 18-8 and pass the witness.

9 THE COURT: All right. Thank you. The Government  
10 may cross examine.

11 MR. DOUGLAS: Thank you, Your Honor.

12 CROSS EXAMINATION

13 BY MR. DOUGLAS:

14 Q. Mr. Laurita, you grew up in the coal industry, didn't  
15 you?

16 A. Yes I did.

17 Q. Your family has run a coal company for generations,  
18 hasn't it?

19 A. Yes. Yes they have.

20 Q. Your father ran a coal company, right?

21 A. Yes he did.

22 Q. You've followed in your father's footsteps, haven't you?

23 A. Yes. Yes I have.

24 Q. You started working for your father before you even  
25 graduated high school, didn't you?

Laurita - Cross

1 A. Yes, that's correct.

2 Q. You worked for your father while you were attending WVU,  
3 didn't you?

4 A. Yes I did.

5 Q. You're educated with a college degree in Mining  
6 Engineer, right?

7 A. Yes, I am.

8 Q. And you're also a licensed and professional engineer,  
9 right?

10 A. Yes that's correct.

11 Q. You had to meet certain requirements to obtain that  
12 license, didn't you?

13 A. Yes.

14 Q. After obtaining your college degree you joined your  
15 father's company full time, right?

16 A. Yes.

17 Q. As the company mining engineer I believe you testified?

18 A. Yes. At the time, yes.

19 Q. In 1990 at thirty years old and after less than ten  
20 years on the job, you became president of Mepco, didn't you?

21 A. Yeah. Yes.

22 A. Okay. In 2000 at forty years old you became CEO at  
23 Mepco while remaining president as well, right?

24 A. Yes.

25 Q. Watching your father since childhood, you got to see

Laurita - Cross

1 what it was like to run a company, didn't you?

2 A. Yes. I mean it was a much smaller company. Mepco had  
3 grown much larger than the company my dad had run. It was  
4 very, very small, but yes, I mean--we learned some basic  
5 skills. That's what I learned from my dad.

6 Q. You saw at least that your father had significant  
7 responsibilities, didn't you?

8 A. Yes.

9 Q. And no matter the skill you noticed that one of his most  
10 significant responsibilities was to negotiate and approve  
11 contracts on behalf of the company, right?

12 A. I don't know that I saw my dad negotiate contracts on  
13 behalf of the company but I would suppose he did, yes.

14 Q. You never saw that in high school?

15 A. No, I never--no, I never saw my dad negotiate and sign  
16 contracts, no.

17 Q. You never saw that in college?

18 A. No.

19 Q. But you noticed that your father would review contracts  
20 carefully before signing them, didn't you?

21 A. No. I have no knowledge of my dad--I never--I never,  
22 you know participated with him signing contracts.

23 Q. Not in high school?

24 A. No.

25 Q. Not in college?



Laurita - Cross

1 A. No.

2 Q. In your over twenty years of managing companies, you've  
3 reviewed thousands of contracts and other legal documents,  
4 haven't you?

5 A. I would say it's a stretch to say thousands of documents  
6 but, yeah, I have looked at various agreements over the  
7 years, yes.

8 Q. Okay. You were careful to review those documents before  
9 signing them, right?

10 A. Depends on the transaction. Depends on the amount of  
11 paperwork. You entrust your lawyers. You entrust staff to  
12 review documents and, no, there's many times I don't review  
13 the documents. I just trust the staff to do that on my  
14 behalf and our lawyers to do that on my behalf and they tell  
15 you--it's like if you go in to get a bank loan. There may  
16 be thirty pages and, you know, you trust your banker. You  
17 trust them that--that what you're signing is accurate.

18 Q. Did you also do that when the contract was worth  
19 millions of dollars?

20 A. Yeah.

21 Q. Okay. So you made it a practice of just signing your  
22 signature to things no matter what they said?

23 A. That's not what I said.

24 Q. I'm asking you, did you make it a practice of signing  
25 things without reading them?

Laurita - Cross

1 A. No I did not.

2 Q. Okay. While at Mepco you had many employees depending  
3 on you, didn't you?

4 A. Yes, sure did.

5 Q. In fact at Mepco at one point you had eight hundred  
6 employees, right?

7 A. No. It was about six hundred employees at Mepco.

8 Q. Okay. Under your management Mepco grew to become among  
9 the largest independent coal operations in the northeastern  
10 United States didn't it?

11 A. It was fairly large. It wasn't one of the largest, but  
12 it was fairly large as far as an independent is concerned.  
13 Most of the--most of the companies were publicly traded,  
14 much larger than Mepco.

15 Q. So if that's stated in those terms on the WVU web site  
16 having your picture and your bio, that would be inaccurate  
17 that it was one of the largest independent coal operations  
18 in the northeastern United States?

19 A. No, I disagreed to that.

20 Q. Okay.

21 A. It wasn't the largest, but it was one of the largest  
22 independents.

23 Q. You were heavily involved in the Longview Power Plant  
24 Project, weren't you?

25 A. Yes I was.

Laurita - Cross

1 Q. And I believe you testified that was a two billion  
2 dollar project?

3 A. Yes it was.

4 Q. And that's with a b, right?

5 A. Yes, that's correct.

6 Q. In fact at the time it was the largest single project  
7 with respect to dollars spent in the history of the State of  
8 West Virginia, wasn't it?

9 A. Yes it was.

10 Q. And Mepco, under your management, had invested over one  
11 hundred million dollars in the project, correct?

12 A. It was--Mepco had borrowed about a hundred million  
13 dollars to expand so that it would have the coal readily  
14 available when Longview went on line.

15 Q. It was still over a hundred million dollars, right?

16 A. Yes. Yes it was.

17 Q. You couldn't just do what you wanted to with the hundred  
18 million dollars, correct?

19 A. No. No you could not.

20 Q. Okay.

21 A. It had to go to capital expenditures.

22 Q. Those capital firms would get upset if you didn't pay  
23 back the hundred million dollars?

24 A. Very much so.

25 Q. All right. In 2010 the Longview Power Plant Project was

Laurita - Cross

1 still in the construction stage, wasn't it?

2 A. Yes it was.

3 Q. At the time you were concerned about the chance of  
4 success for Longview, weren't you?

5 A. Concerned about the chance of success. I'm not  
6 following your question.

7 Q. You were concerned--first of all I think you testified  
8 on direct that there was a permit pulled by the federal  
9 government for the first time anyone could remember or  
10 something to that effect. Is that what you testified?

11 A. Yes, that was with regard to the Spruce Fork Surface  
12 Mine Permit in southern West Virginia.

13 Q. Okay. And I believe you testified on direct if Longview  
14 didn't run, Mepco wouldn't be able to run. Is that true?

15 A. That's true.

16 Q. And I think you even said it would be the end of Mepco,  
17 didn't you?

18 A. Yes.

19 Q. That's your company?

20 A. I was the president. It wasn't my company but I was the  
21 president of it.

22 Q. You were an owner in the company as well, right?

23 A. Very small fraction, yes.

24 Q. Very small fraction of millions of dollars is a lot of  
25 money, isn't it?

Laurita - Cross

1 A. We borrowed millions of dollars.

2 Q. Okay. In fact in 2010, as you saw during this trial,  
3 you sent Charles Huguenard an e-mail where you indicated  
4 your concern because you had too much at stake financially,  
5 isn't that true?

6 A. Mepco and Longview had a huge amount at stake  
7 financially. Mepco and Longview both.

8 Q. And you were running Mepco?

9 A. Yes.

10 Q. Okay. If Mepco failed, then that would tarnish your  
11 family name and legacy wouldn't it?

12 A. No. No. We have a very good reputation. I wasn't even  
13 worried about that.

14 Q. By 2010 you were the last of the Laurita involved in  
15 Mepco, right?

16 A. Yes.

17 Q. Your siblings had sold their interests?

18 A. Yes.

19 Q. The success of Mepco was left to you, wasn't it, as the  
20 president and CEO?

21 A. No. No. Mepco is comprised of six hundred people and a  
22 team and so it wasn't me. It wasn't Jimmy Laurita. It's  
23 six hundred people.

24 Q. But as the president and CEO you would agree at least  
25 that there was a lot of pressure on you?

Laurita - Cross

1 A. Certainly. As president of the company, there's  
2 certainly a lot of pressure on that individual.

3 Q. And you would agree that pressure can cause someone to  
4 do something they wouldn't normally do, right?

5 A. I don't know how to answer that.

6 Q. Do you agree with the statement that pressure can cause  
7 someone to do things they wouldn't normally do, yes or no?

8 A. That's--you know, that's kind of a--I don't know how to  
9 answer that. If you have pressure on you, of course you  
10 could probably make mistakes. You could do things you  
11 normally wouldn't do I guess. It's part of that job. When  
12 you become an officer of a company you've got pressure on  
13 you all the time.

14 Q. Do you agree that pressure can cause someone to do  
15 something out of character?

16 A. Depends on how strong your character is.

17 Q. Now you testified on direct prior to 2008 I believe you  
18 didn't find a need to make political contributions, right,  
19 is that what you testified?

20 A. Yes.

21 Q. There was a need in 2010, wasn't there?

22 A. Certainly.

23 Q. And your solution to your concern about Longview was to  
24 become more politically involved than ever before, right?

25 A. I don't know if that was a solution but it's something

Laurita - Cross

1 that I felt we needed to do.

2 Q. Okay. In 2010 you called a meeting with your executives  
3 to discuss political contributions, didn't you?

4 A. Yes I did.

5 Q. The executives were your employees, weren't they?

6 A. Yes.

7 Q. They were your subordinates, right?

8 A. Yes they were.

9 Q. In fact you had hired them, right?

10 A. Yes.

11 Q. You had also promoted them, correct?

12 A. Yes I did.

13 Q. You had known at least one of them, Karen Hughes, for  
14 decades, hadn't you?

15 A. Yes. Yes I did.

16 Q. You knew that they trusted you, didn't you?

17 A. Yes, and I trusted them.

18 Q. I believe you testified on direct that you were friends,  
19 right?

20 A. Yes.

21 Q. You were a team, correct?

22 A. Yes.

23 Q. You worked closely together, right?

24 A. Yes we did.

25 Q. At that meeting you requested that your executives begin

Laurita - Cross

1 making political contributions, didn't you?

2 A. Yes I did.

3 Q. You requested that your executives have their spouses  
4 make contributions, didn't you?

5 A. I--I brought it up to them. I said is this--again is  
6 this the right thing to do, should we do this and they  
7 agreed we should.

8 Q. But it originated with you, correct?

9 A. Yes it did.

10 Q. All right. And you knew that they would do what you  
11 asked them because you were their boss, didn't you?

12 A. No. I did not manage that way. I absolutely did not  
13 manage that way. Anybody that knows me, has been around me,  
14 knows I don't manage that way.

15 Q. You knew that they would do what you asked because you  
16 had hired them and you had the power to fire them, didn't  
17 you?

18 A. No, that's incorrect.

19 Q. You knew that they would do what you asked because you  
20 had promoted them and had the power to demote them, didn't  
21 you?

22 A. That's not true.

23 Q. You had the power--

24 A. We had to operate as a team. I didn't operate by force.  
25 I didn't operate as a hammer. I did not operate that way.



Laurita - Cross

1 Anybody that knows me, has been around me, knows that's not  
2 the way I work.

3 Q. But you did hire them, right?

4 A. Yes I hired them.

5 Q. You had the power to fire them, right?

6 A. That is correct.

7 Q. You had promoted them, correct?

8 A. That is correct.

9 Q. You had the power to demote them, true?

10 A. Yes.

11 Q. And I believe you testified on direct you had the power  
12 to increase their pay, right?

13 A. Yes. I had the authority to do so.

14 Q. You also knew that they would not participate if it  
15 would cost them money, didn't you?

16 A. I never asked that question. I knew that they were  
17 underwater to begin with. I felt an obligation to raise  
18 their compensation if I asked them to do this. I never  
19 asked them if they would do it absent that.

20 Q. Sir, I didn't ask you if you asked them. I asked, you  
21 also knew that they would not participate if it would cost  
22 them money, right?

23 A. No. I didn't ask--I didn't know because I never asked.

24 Q. You assured them that they would not be out any money  
25 because of this program, did you?

Laurita - Cross

1 A. I assured them that they would not get hurt, that the  
2 bonus would be an excess of--of any additional expenses they  
3 would have associated with this.

4 Q. What do you mean by hurt?

5 A. That they wouldn't--they were already well underwater  
6 compared to the other executives in their peer group and so  
7 to ask them to now participate in this program when they are  
8 already way behind compensation of everybody else, to me  
9 that's getting hurt.

10 Q. So you wanted them to have money to be able to  
11 participate in the program then, right?

12 A. I wanted to have additional compensation so it would be  
13 much easier for them to do.

14 Q. So the additional compensation was connected to the  
15 program, correct?

16 A. Yes. I gave them a bonus. I gave them additional  
17 compensation.

18 Q. And you did that with company money, correct?

19 A. All the money, their pay. It went into their normal pay  
20 like all their other salary, bonuses; it's all the same.

21 Q. This additional bonus was funded by Mepco money,  
22 correct?

23 A. Yes, sir.

24 Q. You heard all eight executives testify that their  
25 contributions were funded by Mepco, didn't you?

Laurita - Cross

1 A. Yes.

2 Q. And that that's what the second bonus was for?

3 A. It was additional compensation so they could easily  
4 afford to do this.

5 Q. Eight different people didn't misunderstand you, did  
6 they?

7 A. No, I just agreed to that. We--I raised their  
8 compensation so they could afford to be able to do this,  
9 much easier to be able to do this.

10 Q. And you also saw during the trial bank records showing  
11 multiple examples of a five figure deposit made into an  
12 executive's account and then the very next day a check  
13 written on the same account for contributions, didn't you?

14 A. Yes.

15 Q. You don't dispute the accuracy of those bank records, do  
16 you?

17 A. No, not at all.

18 Q. So then you will admit that those five figure payments  
19 from Mepco were earmarked for contributions and were not  
20 compensation, right?

21 A. They were not earmarked; no. It was a compensation  
22 method. I issued a bonus like we discussed--

23 Q. You're not suggesting it was a coincidence that someone  
24 received a five figure deposit and the next day wrote a  
25 check to a campaign, are you?

Laurita - Cross

1 A. It wasn't a coincidence, no, but it wasn't earmarked  
2 monies. It's extra money. It goes into their compensation  
3 just like all their other compensation, the same bank  
4 accounts all their other compensation goes to.

5 Q. And you didn't seek any type of approval above you to  
6 use nearly one half million dollars of company money to fund  
7 these contributions, did you?

8 A. I'm sorry, could you ask that again?

9 Q. You didn't seek any approval above you to use nearly one  
10 half million dollars of company money to fund these  
11 contributions, did you?

12 A. No, I didn't need to.

13 Q. That's because you had the power to use nearly one half  
14 million dollars of company money to make contributions,  
15 didn't you?

16 A. I wouldn't term it like that. Our payroll was sixty  
17 million dollars a year, okay, and so I had the ability to  
18 adjust compensation if I needed to and one employee costs a  
19 hundred thousand dollars a year so we had six hundred  
20 people, you know, that's--in the scheme of things that's not  
21 much money so I had the purview to be able to do that, to  
22 adjust compensations if need be.

23 Q. So with a sixty million dollar budget, it would be  
24 difficult for an outsider to find just five hundred thousand  
25 dollars and what happened with it, wouldn't it?

Laurita - Cross

1 A. No. I mean it's all--it was all open for everybody to  
2 look at and it was not hidden. Auditors could easily access  
3 it. Alvarez and Marsol could. No, it was easy to track all  
4 that.

5 Q. At the meeting with your executives or shortly  
6 thereafter, you told them, again your subordinates, that you  
7 would be sending them suggestions regarding the  
8 contributions, right?

9 A. I told them that we would basically get the  
10 recommendations from the West Virginia Coal Association and  
11 Pennsylvania Coal Association and that we would use that as  
12 our template, our guide to try to give us guidance on who we  
13 should support and who we shouldn't support.

14 Q. And you agree that those suggestions were coming from  
15 you to your executives?

16 A. Yeah. I was the representative at the time--early on I  
17 was a representative for both the Pennsylvania and West  
18 Virginia Coal Association. Subsequently after a period of  
19 time Eric Grimm became the representative. He represented  
20 Mepco and Dana Mining on the Pennsylvania Coal Association  
21 so some of the recommendations, Eric would tell me what  
22 Pennsylvania Coal Association was recommending at that time.

23 Q. You understand that suggestions from a boss are not  
24 entirely suggestions, don't you?

25 A. No. No. I did--you're mischaracterizing the way I

Laurita - Cross

1 managed and I did not manage that way.

2 Q. I'm merely asking your understanding, sir?

3 A. That's not my understanding.

4 Q. These suggestions included which candidate, right?

5 A. Yes. Again we get our recommendations from the  
6 Pennsylvania Coal Association, West Virginia Coal  
7 Association and then we would debate them within the group  
8 at times and group meetings we would debate and sometimes we  
9 would choose not to support a candidate or sometimes we  
10 would choose to support candidates different than what the  
11 Coal Associations recommend.

12 Q. But you did testify on direct that you did not care  
13 about to which candidate the executives decided on their own  
14 to contribute, right?

15 A. Yes.

16 Q. Wouldn't that be counterproductive if you have multiple  
17 executives contributing to opponents?

18 A. They had the choice to support whoever they wanted.  
19 This executive team were all pro coal. They were all a very  
20 good executive team and you trust them. You give them a lot  
21 of responsibility. You give them discretion. You trust  
22 them so if they were choosing to support a candidate, you  
23 know, you had to believe that they know, you know, have a  
24 good reason for that and what they're doing, so they had  
25 their free will to support whoever they wanted to support.

Laurita - Cross

1 Q. But you would agree the point of the program was to  
2 contribute to coal friendly politicians?

3 A. Yes.

4 Q. And you testified that you receiving suggestions from  
5 the West Virginia Coal Association, right?

6 A. And the Pennsylvania Coal Association, yes.

7 Q. You didn't receive any suggestions from the West  
8 Virginia Coal Association that said you should probably give  
9 equally to Mike Oliverio and David McKinley, did you?

10 A. No.

11 Q. Because they're opponents, right?

12 A. Yes.

13 Q. And one of them is going to be considered more coal  
14 friendly than the other by a Coal Association, right?

15 A. No, that wasn't the case. As I testified earlier, Mike  
16 Oliverio was a State Senator and he had supported the coal  
17 industry for a lot of years here and David McKinley was not  
18 as well known so the Coal Association--it was a tough  
19 decision on the Coal Association's part but they ultimately  
20 chose to endorse because they endorse--the Coal Associations  
21 typically endorse candidates and so--in almost every race  
22 and so they endorsed Mike Oliverio is what they chose to do.

23 Q. In fact you changed your mind about Oliverio, didn't  
24 you?

25 A. No. I never changed my mind about Oliverio. No. No.

Laurita - Cross

1 I eventually--as I came to know David McKinley and spent a  
2 lot more time with him, he was--he was a great candidate and  
3 subsequently since he's been a US Congressman, he does a  
4 great job. He represents the constituents of the state  
5 very, very well and so in time I learned to appreciate him  
6 quite a bit and I supported him.

7 Q. These suggestions from you to your executives included  
8 the amounts, correct?

9 A. Yes. They would depend upon me to make recommendations  
10 on amounts. Yes.

11 Q. These recommendations included whether their spouses  
12 would contribute, right?

13 A. Yes.

14 Q. These instructions included when the contributions were  
15 needed, right?

16 A. Yes.

17 Q. These instructions included sometimes where the  
18 contributions were to be made? By this I mean you bundled  
19 the contributions for delivery to the campaigns, didn't you?

20 A. We would--the candidates would--typically instead of  
21 going around chasing a bunch of different people for  
22 contributions they--they depended on, as we talked about  
23 before, the board members of the Coal Associations to try to  
24 work on their behalf to try to fund raise for them, so they  
25 would typically come to our office or, you know, if I was



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1 going to a fund raising event, I would take checks with me  
2 or if I couldn't go then if one of the execs could go, that  
3 they would take the checks with them.

4 Q. But you admit that on occasion you had taken all the  
5 executives' checks to the campaign?

6 A. Yes.

7 Q. So if you had taken all the checks to the campaign from  
8 the executives, then you would know whether the executives  
9 are making the suggested contributions, right?

10 A. No, not always. No.

11 Q. Because you testified on direct that you did not know if  
12 the executives were actually following your suggestions,  
13 right?

14 A. I don't remember tracking it to that detail.

15 Q. My question is you testified on direct that you didn't  
16 know that the executives were making all the contributions.  
17 Is that a correct characteristic of the correct testimony?

18 A. Yes. Yes, I believe that is correct.

19 Q. Okay. So with all these suggestions and instructions,  
20 you would agree that you were involved in every major aspect  
21 of these contributions, weren't you?

22 A. That's a pretty broad characterization. I'm not sure  
23 exactly what you're asking me.

24 Q. You were involved in suggesting the candidate?

25 A. Yes, I was involved in that.

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1 Q. You were involved in suggesting the amount, correct?

2 A. Yes I was.

3 Q. You were involved in suggesting whether the spouses  
4 would contribute, right?

5 A. Yes I was involved with that.

6 Q. You were involved in explaining when the contributions  
7 were needed, right?

8 A. Yes. Generally, yes.

9 Q. You were involved in delivering the contributions,  
10 correct?

11 A. Not always.

12 Q. You were at points, weren't you?

13 A. Yes.

14 Q. Okay. You were involved in every aspect of these  
15 contributions because in truth they were your contributions,  
16 aren't they?

17 A. No. That is absolute mistruth.

18 Q. You would agree that it would be incorrect for the  
19 campaigns to believe you were raising this money from the  
20 executives, right?

21 A. Can you ask that again?

22 Q. You would agree that it would be incorrect for the  
23 campaigns to believe that you were raising this money from  
24 the executives, right?

25 A. The campaigns depended upon me and may others, the coal

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1 executives, to try to raise for them.

2 Q. You did not raise this money, did you?

3 A. I went out on their behalf and raised money. I mean I  
4 asked individuals to see if they would be willing to  
5 contribute.

6 Q. You didn't raise the money that the executives were  
7 contributing, did you?

8 THE COURT: All right. That's the last time on  
9 that one. There's no objection but I think it's the third  
10 time you've asked the same question. I think he's answered  
11 it.

12 MR. DOUGLAS: Thank you, Your Honor.

13 BY MR. DOUGLAS:

14 Q. All the money came from your company at your direction,  
15 right?

16 A. No.

17 Q. All the money which funded the executives' contributions  
18 came from your company, didn't it?

19 A. The compensation came from Mepco.

20 Q. It was either you or your company that was the true  
21 source of the executives' contributions, right?

22 A. All of their compensation came from Mepco.

23 Q. But you would agree this wasn't just their salary from  
24 which they were writing checks, right?

25 A. This was their compensation, yes, that came--that wrote

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1       these checks. It was their money.

2       Q. You told Karen Hughes not to talk about the program  
3       outside the executives, right?

4       A. Yes.

5       Q. You wanted to keep the information about the program  
6       contained, didn't you?

7       A. Wanted to keep the information with respect to their  
8       compensation, like all their compensation, to be  
9       confidential.

10      Q. You knew that Karen Hughes was causing deposits into the  
11      accounts of the executives for the program, right?

12      A. Like all their compensation I assume would have been  
13      deposits in their accounts.

14      Q. Well, you've testified that the second bonus was related  
15      to the program, didn't you?

16      A. Yes, it was compensation--additional compensation so  
17      that they could afford to be able to make campaign  
18      contributions.

19      Q. And you were the one telling Karen Hughes how much  
20      to--what the amount of these deposits should be?

21      A. I don't know if I did all the time. There was only a  
22      few a year and so--I mean they typically were very large  
23      bonuses given as contributions.

24      Q. You're not suggesting that Karen Hughes came up with  
25      these five figure numbers on her own, are you?

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1 A. No. No. But I did give her instruction that--that I  
2 wanted to make sure their compensation was high enough so  
3 they could be able to afford to do this.

4 Q. You caused the company to also reimburse the executives  
5 when the advancements ran out, didn't you?

6 A. I think we issued more bonuses, more compensation.

7 Q. Because you didn't want the executives be hurt, right?

8 A. We issued additional additional compensation, just as I  
9 explained earlier, to make sure that they didn't--that they  
10 weren't in a situation where they were hurt financially.

11 Q. You knew that these payments were being run through  
12 payroll, right?

13 A. I wasn't completely aware of the accounting system. I  
14 didn't--that wasn't really under my purview and I didn't get  
15 involved with that so--so I assume it went into their normal  
16 payroll.

17 Q. You knew that these payments were being called bonuses  
18 though, right?

19 A. We called them bonuses. I don't know how they did that  
20 in the payroll system.

21 Q. The executives received production bonuses but that's  
22 not what these were, right?

23 A. No. This was a discretionary bonus. It was not a  
24 production bonus.

25 Q. The executives were not allowed to use this money as

Laurita - Cross

1 they wished, were they?

2 A. Yes. It was their compensation.

3 Q. They couldn't have just booked a cruise and then not  
4 made any of your suggested donations, isn't that true?

5 A. It was part of their total compensation. It all went  
6 into one kitty and one compensation.

7 Q. It was not your intent that the executives would make  
8 money from these payments, right?

9 A. I wanted to make sure that the compensation was well in  
10 excess of any additional expenses they would have associated  
11 with making campaign contributions.

12 Q. So you merely intended to make them whole, right?

13 A. No. I wanted to be in excess of that and it was. I  
14 mean what I have reviewed in documents it was well above  
15 that plus there was money put into their 401(k)s as well.

16 Q. These payments were not called advancements for  
17 political contributions in any Mepco records, were they?

18 A. No. Not to my knowledge. I don't know.

19 Q. These payments were not called, to your knowledge,  
20 reimbursements for political contributions in any Mepco  
21 records, were they?

22 A. I really don't know.

23 Q. You were aware that Mepco was being financially audited  
24 on a regular basis, weren't you?

25 A. Yes.

Laurita - Cross

1 Q. But you didn't make sure, as president and CEO, that the  
2 auditor knew the purpose for these payments, right?

3 A. I didn't interact with auditors. We had three  
4 accountants on staff. We had two financial analysts on  
5 staff. We had a huge Accounts Payable staff and that just  
6 wasn't under my purview. That's typically under Kent  
7 Lindsay or Karen Hughes.

8 Q. You knew that having to make these contributions was  
9 annoying to most of the executives, didn't you?

10 A. Hey, none of us liked giving money. None of us liked  
11 going to fundraisers but we needed to.

12 Q. But you knew that they made the contributions, despite  
13 their annoyance, because you were their boss, correct?

14 A. No. I think that it is a mischaracterization.

15 Q. You asked Karen Hughes to communicate your requests for  
16 contributions to the other executives, right?

17 A. Yes. And then subsequently it was Suzanne after I  
18 brought Suzanne on board.

19 Q. And you told her something to the effect of ask, don't  
20 tell when communicating with them?

21 A. As I talked about earlier, the--we just didn't want to  
22 feel--anybody to feel that they were forced into it or  
23 obligated to do that so I never wanted anybody to feel like  
24 they had to do it.

25 Q. When you, as president and CEO, cause your money to

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1 front almost fifteen thousand dollars to a subordinate and  
2 then ask that employee to make a twenty-five hundred dollar  
3 campaign donation, that's not really asking, is it?

4 A. I went to them before we started it and asked them if  
5 this was the right thing to do? Did they want to do it?  
6 Should we do it? And they agreed.

7 Q. I want to talk about your knowledge of the campaign  
8 laws. You testified on direct examination that you knew  
9 there were individual limits or limits on an individual, how  
10 much an individual can contribute, right?

11 A. Yes. Generally yes.

12 Q. And I believe you indicated that you had learned that in  
13 part from reading some of the invitations, right?

14 A. Yes.

15 Q. And you knew that this individual limit increased over  
16 time, correct?

17 A. I had come to learn that over time, yes.

18 Q. I mean you did recall David McKinley himself sending you  
19 an e-mail indicating that the limit had increased to  
20 twenty-six hundred dollars, right?

21 A. I don't remember that specific e-mail but I have learned  
22 over time that they did increase, I think that on a federal  
23 level but it's my understanding, like West Virginia's hadn't  
24 but I believe the federal does. I don't understand why or  
25 how the mechanism but I had come to learn that they did



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1 increase over time.

2 Q. And you do recall seeing the e-mails that were presented  
3 during this trial between you and Suzanne Crane where you're  
4 increasing your request from twenty-five hundred to  
5 twenty-six hundred for some candidates?

6 A. Yes, sir.

7 Q. You knew that the individual limits prevented you from  
8 personally contributing as much as you wanted to contribute  
9 to certain candidates, did you?

10 A. Can you ask that question again?

11 Q. You knew that the individual limits prevented you from  
12 personally contributing as much as you wanted to contribute  
13 to some of the candidates?

14 A. No. I didn't want to contribute more, not personally  
15 me. I mean, you know, they always ping me to contribute to  
16 the max and so, you know, I gave the max.

17 Q. And you testified on direct that you knew that a company  
18 couldn't write a check in its name to a candidate?

19 A. That's right.

20 Q. And did you learn that in part from that e-mail chain  
21 between you, Bill Raney and Louis Southworth, where you were  
22 asking about LLC's contributing?

23 A. No, that pertained--I had seen something along the way  
24 where it looked like an LLC was permissible and so I was  
25 asking him--Mepco was an LLC so I was wondering, well can

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1 Mepco give and--because it's an LLC and so that was an  
2 iteration of--of exchange back and forth trying to figure  
3 out whether Mepco can give or not.

4 Q. And you saw that information about LLC's by reading some  
5 invitations, right?

6 A. I don't remember exactly where I read it, but it  
7 might've been some invitations.

8 Q. You recall telling Thomas Jones at Camelot Coal I have  
9 to do the max several times over, right?

10 A. I remember that e-mail, yes.

11 Q. When you made that statement to him you meant that you  
12 were multiplying the individual maximum by maxing out each  
13 of your executives, isn't that right?

14 A. No it's not. No. We were asked several times by the  
15 Manchin campaign--they had several fundraisers all in a row  
16 and had asked me and my family to--to show up at each one of  
17 them and so I believe I had my wife write a check to one of  
18 the fundraisers and my dad to another and me another, so as  
19 a family we had--we had maxed out.

20 Q. You testified on direct that you understood that it was  
21 prohibited for someone to give you a hundred dollars and say  
22 here give this to, I think your example was, Senator Manchin  
23 for me, right?

24 A. Yes.

25 Q. Isn't that what you were doing with the executives as

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1 well, right?

2 A. No. Big fundamental difference. I wasn't doing a one  
3 for one exchange of dollars and the executives, I came to  
4 them beforehand and asked them, is this the right thing to  
5 do? Should we do this? Do you want to do this? And they  
6 said yes.

7 Q. I believe your testimony on direct was not all of it was  
8 one-for-one, isn't that true?

9 A. I'm sorry. Can you ask the question again?

10 Q. You testified on direct that not all of the money was  
11 one-for-one with the contributions, right?

12 A. None of it was one-for-one.

13 Q. Okay. You hosted Mark Critz fundraisers, right?

14 A. Yes i did.

15 Q. You approved invitations for those fundraisers, correct?

16 A. I would generally take a look at the top half of the  
17 fundraisers with respect to formatting or, you know, who all  
18 was on those fundraisers. Sometimes I was asked to  
19 be--there was a large group of people on fundraisers;  
20 sometimes it might've been just a few and so I would kind of  
21 look at--look at those and see if the formatting looked good  
22 and that sort of thing and then would depend upon the--the  
23 campaigns to work with Suzanne, for example, when she was  
24 working on those invitations to make sure everything was  
25 acceptable to them.

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1 Q. So you're saying you didn't read the bottom part which  
2 said contribution rules and indicated contributions must be  
3 made from your own funds and funds cannot be provided to you  
4 by another person?

5 A. I had seen that language over the years but I didn't  
6 review--I didn't review all the boilerplate language, if you  
7 want to call it that, at the bottom of these because they're  
8 all different. It would depend on the campaign. I never  
9 saw any kind of a standard. The invitations varied  
10 dramatically and typically the campaigns themselves would  
11 approve of an invitation.

12 Q. So you had seen language like that over the years?

13 A. Yes I had.

14 Q. Okay. You agree that during the time of the program you  
15 made a lot of contributions in your own name, right?

16 A. Yes I did.

17 Q. Between April of 2010 and October of 12 you made  
18 contributions in your own name to over twenty different  
19 federal candidates. Does that sound about right?

20 A. I don't remember, but it could be.

21 Q. And about half of these candidates were candidates that  
22 you did not ask your executives to contribute to, right?

23 A. I really don't--I really don't remember. There  
24 were--there were a lot of candidates that were outside of  
25 the region. Typically the candidates that the executive

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1 team supported were candidates that--that represented areas  
2 where our employees were at, southwestern Pennsylvania,  
3 northern West Virginia, that's what typically the executive  
4 team because they were representing the employees of the  
5 company but there was a lot of--the Coal Association and a  
6 lot of its members had asked me many times to support people  
7 just across the country that they needed help and so I chose  
8 personally to support people across the country that I  
9 didn't even know but they needed help and the Coal  
10 Association or various other board members asked for help so  
11 I did.

12 Q. You heard most of your executives testify that they had  
13 never made contributions before 2010, right?

14 A. Yes.

15 Q. You admit that you were much more experienced with  
16 political donations than your executives were, right?

17 A. I would say it's a fair statement.

18 Q. Likewise you admit that you were much more familiar with  
19 contribution laws than your executives, right?

20 A. I guess probably to some extent because I had given  
21 before they had.

22 Q. And you were shown on direct examination a contribution  
23 form to Tom Smith that you indicated you completed and  
24 signed, right?

25 A. That's correct.

Laurita - Cross

1 Q. And you indicated that you had read that before signing  
2 it?

3 A. Probably. Yes.

4 Q. You indicated that there were a lot of invitations  
5 coming your way?

6 A. Oh, yeah. Yeah, quite a few.

7 Q. And there were a lot of contribution forms?

8 A. Yes.

9 Q. But there weren't very many contribution forms that made  
10 you sign the form, isn't that true?

11 A. I remember filling out lots of forms.

12 Q. You would agree it's rare on the contribution forms to  
13 have you sign something?

14 A. I'm sure I signed lots of them.

15 Q. Before using hundreds of thousands of dollars of company  
16 money to fund campaign donations you would agree that it  
17 would be wise to confirm that doing so is lawful, right?

18 A. Can you re-ask that question please?

19 Q. Before causing these second bonuses, you would agree it  
20 would be wise to determine whether it's lawful?

21 A. The compensation of the officers, I didn't think that  
22 anything was improper, not a bit. It was just added  
23 compensation so I didn't feel the need to go out and check  
24 lawfulness because I didn't think there was anything wrong  
25 with it. I just added--I increased their compensation.

Laurita - Cross

1 Q. But you did have access to legal advice as the president  
2 and CEO of Mepco, right?

3 A. Yes. I had access to lawyers and all that sort of  
4 thing.

5 Q. You had a General Counsel?

6 A. Yes I did.

7 Q. You also had a personal attorney named Greg Rosen,  
8 right?

9 A. Yes. He represented our family for many years. Yes.

10 Q. And you apparently had access to Louis Southworth as  
11 well, correct?

12 A. He was the attorney that represented the Coal  
13 Association.

14 Q. You knew that Mr. Southworth was one of the best  
15 attorneys in the State, right?

16 A. I don't know that I knew that but I knew he was a very  
17 good attorney. He was well thought of and highly respected  
18 in the State.

19 Q. As we've already covered, you sought Mr. Southworth's  
20 advice on whether an LLC could make political donations in  
21 its name, right?

22 A. Yes. That's correct.

23 Q. So you also believed that he was knowledgeable on  
24 campaign finance laws, right?

25 A. Yes.

Laurita - Cross

1           THE COURT: Mr. Douglas, it's a quarter till  
2 eleven. It's past time for the jury to have their  
3 midmorning recess. I do hate to interrupt your  
4 cross-examination. If you're almost finished I think we  
5 could bear on but if it's going to take a while longer I  
6 believe the jury's entitled to their midmorning recess.

7           MR. DOUGLAS: We should take a recess.

8           THE COURT: Okay. Thank you. Ladies and Gentlemen  
9 of the Jury, it's time for your midmorning recess. We'll  
10 resume at eleven o'clock and I want to thank you for your  
11 patience and attention. Please leave your notebooks face  
12 down on your chairs and do not discuss anything about this  
13 case among yourselves during the recess. Court Security  
14 will lead you out. Thank you.

15           (Jury out at 10:45 a.m.)

16           THE COURT: All right. Mr. Laurita, would you  
17 please step down and be prepared to resume the stand at  
18 eleven o'clock. Court stands in recess until eleven  
19 o'clock. Thank you.

20           (Recess from 10:46 a.m., until 11:08 a.m.)

21           THE COURT: Thank you. Please be seated. I  
22 apologize for the brief delay. I had other matters I had to  
23 address. We can bring the jury in.

24           MR. CARR: Your Honor, while the jury--

25           THE COURT: I was about to say, they're about to



Laurita - Cross

1       come in, Mr. Carr. What is it?

2               MR. CARR: Just very briefly, Your Honor. I just  
3       wanted to put on the record that I'm aware of the  
4       prohibition of speaking to the defendant while he is  
5       testifying and I did not do so.

6               THE COURT: Thank you.

7               (Jury in 11:10 a.m.)

8               THE COURT: Ladies and Gentlemen, welcome back and  
9       my apologies for the brief delay. I had another matter to  
10      attend to. Mr. Douglas, you may resume your  
11      cross-examination.

12              MR. DOUGLAS: Thank you, Your Honor.

13      BY MR. DOUGLAS:

14      Q. Mr. Laurita, during the program you know it was unlawful  
15      to provide a false statement to the federal government,  
16      right?

17      A. I would think so; yes.

18      Q. During that time you also knew it was--it would be  
19      unlawful to cause someone else to provide a false statement  
20      to the federal government, correct?

21      A. Yes. I would think so. Yes.

22      Q. At that time you knew that the Federal Election  
23      Commission was an agency of the federal government, didn't  
24      you?

25      A. I subsequently learned about that, yes, but at the time

Laurita - Cross

1 I don't--I wasn't familiar with the Federal Election  
2 Commission.

3 Q. You saw on e-mails where campaigns would mention the  
4 FEC, didn't you?

5 A. No I don't remember.

6 Q. You knew that in some way the federal government was  
7 providing some oversight to campaign contributions, didn't  
8 you?

9 A. I knew that there were--you know I learned through the  
10 process that there was reporting requirements that the  
11 campaigns had to report to the federal government, but I  
12 didn't know to what extent.

13 Q. And you knew that the purpose of this was to identify  
14 individuals who gave money to campaigns, right?

15 A. Yeah. That was obvious from the forms that you filled  
16 out that--that they wanted some information, your  
17 occupation, where you lived, that sort of thing.

18 Q. And you knew that the reporting would include name and  
19 amount as well, right?

20 A. Yes.

21 Q. Okay. You knew that the campaigns were receiving that  
22 information and then providing it on to the government,  
23 right?

24 A. I assumed that. I didn't know for a fact but I assumed  
25 that.

Laurita - Cross

1 Q. Would you agree that the Government's information on  
2 this--on donations is only as good as what the campaigns  
3 would give them?

4 A. I would assume that's correct.

5 Q. Would you agree that the campaigns' information is only  
6 as accurate as what the donors would give them?

7 A. Yes, that would be a fair assumption.

8 Q. You understand the phrase garbage in, garbage out,  
9 right?

10 A. Yes I do.

11 Q. That would apply here to, wouldn't it, to campaign  
12 donations and information about them?

13 A. Yes.

14 Q. If a campaign had been given false information and  
15 provided that to the federal government, then the federal  
16 government would've received false information, right?

17 A. Yes.

18 Q. Then you understand that the whole system breaks down  
19 when a campaign does not know the person giving them the  
20 donation is not the true source of the money, right?

21 A. Yes. That's--that's correct.

22 Q. You did not tell, for example, the McKinley campaign  
23 that you were using company money to fund the donations of  
24 your executives, did you?

25 A. No I didn't because I didn't believe that was true.

Laurita - Cross

1 Q. You didn't tell any of the campaigns that you were  
2 providing bonuses to the executives that they were using for  
3 donations, did you?

4 A. No I did not.

5 Q. And you knew of nothing indicating this fact to the  
6 campaigns, right?

7 A. Did I know of information provided to campaigns that  
8 would state that? I'm not following your question.

9 Q. Okay.

10 A. Could you re-ask that please?

11 Q. If the campaigns had known that the executives'  
12 donations were being funded by company money, you don't  
13 believe they would accept the donations, do you?

14 MR. CARR: Objection.

15 THE COURT: Sustained.

16 BY MR. DOUGLAS:

17 Q. In any event you knew that the campaign committees were  
18 providing information to the government which identified  
19 your executives and their spouses as donors, right?

20 A. Yes. I would say that's a fair assessment. Yes.

21 Q. You can agree that this program wasn't all about trying  
22 to garner favor with coal friendly politicians, don't you?

23 A. This program, as you call it, was about trying to  
24 support candidates that were supportive of our industry and  
25 support our employees. I am not following your question.

Laurita - Cross

1 Q. Okay. Fine. You liked being able to sit at the head  
2 table with Senator Manchin at fundraisers, didn't you?

3 A. That would be a privilege.

4 Q. You could get face-to-face meetings with David McKinley,  
5 Congressman McKinley, couldn't you?

6 A. Yes, you could. It maybe difficult at times because  
7 he's, you know in Washington, DC but if he's in the area,  
8 yes. I mean I could get--I could get him to a face-to-face,  
9 either drive up to see him or him come down to see me from  
10 time to time. Most of the time if we wanted to communicate  
11 with the staff and wanted a face-to-face we would  
12 typically--staff would be more readily available than what  
13 he was.

14 Q. At one point in 2013, so we're talking about three years  
15 into the program, you told McKinley's staff I would like a  
16 one on one meeting with David prior to setting up an event,  
17 didn't you?

18 A. Yes I remember that.

19 Q. And you're talking about a fundraiser event being hosted  
20 by you for Congressman McKinley?

21 A. Yes I remember that very well.

22 Q. And in that same chain of e-mail you told that same  
23 staff person, I would prefer a meeting with David before we  
24 commit because I need to have a discussion with him  
25 beforehand?

Laurita - Cross

1 A. Yes, sir, I remember that very well. It was--some of  
2 the executives were very concerned about some statements  
3 that David McKinley had made as of late and they were of the  
4 opinion that they may not want to support him anymore and so  
5 I had requested a meeting with David McKinley to say, David,  
6 you've got a lot of your constituents now that are very  
7 concerned about you so you're going--you're going to need to  
8 have a face-to-face with the executive team at some point.  
9 I didn't want to do that in open forum, open public, so I  
10 wanted to tell him that in private.

11 Q. And you had actually had what you describe as lengthy  
12 conversations with Congressman McKinley and it was reported  
13 in the media that he was taking a position you didn't agree  
14 with, isn't that true?

15 A. Yes.

16 Q. In fact you told a colleague, I spoke to David at length  
17 yesterday morning about some news releases that were sent to  
18 me which indicated David agreed that something needed to be  
19 done to combat climate change. He said he would put out a  
20 press release clarifying his stance. Is that accurate?

21 A. Yes. That was about the same time that the staff were  
22 concerned--my staff were concerned about statements. The  
23 engineering staff were--I don't remember exactly what  
24 the--what the--what it was about at this time but I remember  
25 specifically that it was Brian Osborn, Eric Grimm because

Laurita - Cross

1 they--they managed a lot of the mining operations and Brian  
2 was on the Engineering and Permitting. They were very  
3 concerned about some statements he had made and I don't  
4 remember what those were and so I was trying to address that  
5 with him that the staff were very concerned about it  
6 and--and fairly, legitimately so.

7 Q. So is it fair to say that after three years of giving to  
8 Congressman McKinley that you could call a sitting  
9 Congressman and have him put out a press release clarifying  
10 a stance?

11 A. No.

12 Q. All right. I want to end with a few questions here  
13 again about the bonuses. You termed them discretionary  
14 bonuses, right?

15 A. Yes.

16 Q. And that means it's at your discretion as the president  
17 and CEO of the company, correct?

18 A. No. What that means is discretionary is--where  
19 is--there's a fixed component of their compensation and then  
20 there is a variable component of their compensation. Any  
21 other bonuses beyond that are discretionary, like a  
22 retention bonus, health and safety bonus, any kinds of  
23 bonuses, they're all discretionary.

24 Q. And it was your decision to start causing these bonuses  
25 to be made to the executives?

Laurita - Cross

1 A. Yes.

2 Q. And that was in 2010, right?

3 A. Yes. I believe that's correct.

4 Q. And so that was a time when you were concerned about the  
5 Longview Power Plant, right?

6 A. I was concerned about Mepco. I was concerned about all  
7 the employees, concerned about Longview, concerned about the  
8 industry.

9 Q. Okay. You had a lot of concerns and they were partially  
10 financial, right, financial concerns, would you agree?

11 A. Some financial concerns, yes. More so about the  
12 livelihood of all the employees.

13 Q. Okay. If you had a lot of concern about finances and  
14 you had a concern about the other employees then why did you  
15 decide at that time that's a good time to start giving these  
16 bonuses to your executives?

17 A. The CEO of Longview and the CEO of GenPower and my boss  
18 had called a meeting just a few days or a week before that  
19 and asked that me and my executive team get more involved.  
20 That's--that's--that's what started it.

21 Q. Get more involved in politics?

22 A. Absolutely, get more involved in politics and--

23 Q. So then the bonus was for politics?

24 MR. CARR: Objection, Your Honor. Ask the witness  
25 be allowed to finish his answer.



Laurita - Cross

1 THE COURT: Sustained. Let him finish his answer  
2 before--

3 MR. DOUGLAS: Yes, Your Honor.

4 THE COURT: --you follow up. Thank you.

5 BY MR. DOUGLAS:

6 A. To be more involved with campaigns and getting involved  
7 with, you know, the employees. We started a program where  
8 we started posting at the mines the recommendations of the  
9 Coal Associations. It was an across the company effort to  
10 try to educate the employees with the Coal Associations,  
11 their recommendations, so the Human Resource Department got  
12 involved with that and so--even with our executive team,  
13 they did as well.

14 Q. So then the bonuses are directly related to getting  
15 involved with campaign donations, right?

16 A. The bonuses were given so that they would be able to  
17 afford to start contributing to the campaigns.

18 MR. DOUGLAS: Thank you. Nothing further, Your  
19 Honor.

20 THE COURT: All right. Is there any redirect?

21 MR. CARR: Your Honor, may I have a moment please?

22 THE COURT: Yes.

23 (Pause)

24 MR. CARR: Your Honor, I apologize. I just had a  
25 pen explode.

Laurita - Redirect

1 THE COURT: That can be a devastating experience.

2 REDIRECT EXAMINATION

3 BY MR. CARR:

4 Q. Jim, you were asked on cross-examination about attempts  
5 to hide or mislabel the second bonus. Is that true?

6 A. No. Never hid it, mislabeled, anything like that.

7 Q. Did you ever or did you ever direct anyone else to deny  
8 or mischaracterize the second bonus?

9 A. No. Never. Not once.

10 Q. I believe in this trial we have actually seen a  
11 spreadsheet that was sent to you that had the different  
12 columns for the executives and one of them said, in effect,  
13 campaign contributions. Do you recall that?

14 A. Yes I do.

15 Q. That was sent to you, was it not?

16 A. Yes.

17 Q. And who prepared it?

18 A. Karen Hughes.

19 Q. And that was clearly labeled?

20 A. Yes.

21 Q. Was there any attempt within the company, whether to  
22 misrepresent to anyone, Ernst & Young, auditors, the  
23 campaigns, anyone, what was happening with the second bonus?

24 A. No. It never was. Never. No one thought we were doing  
25 anything wrong.

Laurita - Redirect

1 Q. You mentioned the one for one?

2 A. Yes, sir.

3 Q. You think that would be wrong?

4 A. Yes.

5 Q. Did you ever collect checks from the miners for  
6 campaigns?

7 A. The individual coal miners?

8 Q. Yes.

9 A. No. No. I never asked them to do.

10 Q. Did you consider that to be proper?

11 A. The executive team are a privileged group. They get  
12 privilege pay and to go down to the coal miner level and try  
13 to ask them for checks, I just--I would've--I would have  
14 been very uncomfortable with that. I would've thought that  
15 improper.

16 Q. Did you ever tell the miners who to vote for?

17 A. No. No. We made--we posted at the mines the  
18 recommendation of the Coal Associations. One time Dana  
19 Mining endorsed a candidate and the executive team and we  
20 met in a meeting and we discussed it and we said, you know,  
21 we probably shouldn't do that any more. We--probably the  
22 company should not endorse and so we just strictly stuck  
23 with posting at the mines the recommendations of the  
24 Pennsylvania Coal Association and West Virginia Coal  
25 Association for the miners, you know, to--to use as a guide

Laurita - Redirect

1 to vote if they so choosed.

2 Q. You were asked on cross-examination about the event  
3 where you like to set at the head table with Governor  
4 Manchin, do you recall that?

5 A. Yes.

6 Q. Do you recall that event?

7 A. Yes I do.

8 Q. Was there someone else there you wanted to see?

9 A. Yes, more so than Governor Manchin or he might have been  
10 Senator at that time, I'm not sure. It was Paul Evanson.  
11 He was the CEO of Allegheny Energy, was our largest customer  
12 and had been our largest customer for many years. It would  
13 have been a privilege--I had only met him once in my life  
14 even though my dad had sold coal to them before me, I had  
15 only met him once so it would have been a privilege to sit  
16 at the table with him.

17 Q. In effect did Mepco get most of its money from Allegheny  
18 Power?

19 A. During the time when Longview was under construction  
20 virtually all the money and for many years virtually all the  
21 money came from First Energy and Allegheny Power. It was  
22 one in the same. First Energy bought out Allegheny Power.

23 Q. Did you enjoy being part of the campaigns, participating  
24 in the campaigns?

25 A. No. Not at all.

Laurita - Redirect

1 Q. Did you think it was necessary?

2 A. Yes, I felt it was necessary.

3 Q. At any time from 2010 to 2013 did you ever believe for a  
4 second that there was anything wrong with what you did?

5 A. No I did not.

6 Q. If you did, would you admit it?

7 A. Yes I would.

8 MR. CARR: One more moment, Your Honor.

9 (Pause)

10 MR. CARR: Nothing further, Your Honor.

11 THE COURT: All right. Is there any further  
12 cross-examination?

13 MR. DOUGLAS: No, Your Honor.

14 THE COURT: Thank you. Mr. Laurita, you may step  
15 down and return to your seat.

16 (Witness excused from stand)

17 THE COURT: All right. Mr. Carr, you may call your  
18 next witness.

19 MR. CARR: Your Honor, at this time the defense  
20 rests.

21 THE COURT: Ladies and Gentlemen, it's necessary  
22 for me to take up matters outside your hearing at this time  
23 so if you would please follow Court Security back to your  
24 jury room. Please don't discuss the case among yourselves.  
25 I don't think this recess will be very long, but please,

1 during that time don't discuss the case. Please leave your  
2 notebooks face down on your chairs.

3 (Jury out 11:30 a.m.)

4 THE COURT: Does the Government intend to put on a  
5 rebuttal case?

6 MR. DOUGLAS: No, Your Honor.

7 THE COURT: Is there a motion?

8 MR. CARR: Yes, Your Honor. We would renew our  
9 Rule 29 motion.

10 THE COURT: All right. The defendant has renewed  
11 it's Rule 29 motion at the close of all the evidence. I  
12 assume the Government's argument is the same?

13 MR. DOUGLAS: Yes, Your Honor.

14 THE COURT: And for the reasons stated, when viewed  
15 in the light most favorable to the Government, as the Court  
16 must view it, the Court denies the motion. The case will  
17 carry to the jury.

18 All right. Now this is what I feared yesterday  
19 afternoon that we'd have the jury in here for just a couple  
20 of hours this morning and then have to let them go. I don't  
21 know whether you're ready to conduct a charge conference and  
22 argue the case this afternoon.

23 MR. CARR: Your Honor, I would--

24 THE COURT: I'm not going to force you to do it  
25 because I promised you could have until tomorrow but that

1 was--I was assuming we were going to be here into the  
2 afternoon.

3 MR. CARR: Your Honor, I would state as counsel and  
4 I had discussed the matter, at least--I didn't press the  
5 Government but as to the expected length of Mr. Laurita's  
6 testimony I know that--I would say that my representation  
7 was made in good faith yesterday. There was a change in  
8 decision about how the direct examination, the scope of it  
9 would be conducted and I do apologize to the Court for that  
10 but that was--that was not known to me yesterday. That  
11 decision had not been made so I do apologize to the Court.

12 THE COURT: Okay.

13 MR. CARR: I would very much appreciate, and I  
14 don't know the Government's position--I also understand the  
15 time of both the jury and the Court but do not believe that  
16 the client would be well served by doing the arguments this  
17 afternoon.

18 THE COURT: All right.

19 MR. DOUGLAS: The Government agrees, Your Honor.

20 THE COURT: All right. Thank you. Then what I  
21 intend to do is bring the jury back in and excuse them for  
22 the day and bring them back in tomorrow morning when we will  
23 begin the--with the charge and then as I said a break and  
24 then move into the closing arguments and proceed through the  
25 entirety of the close before we take another recess. All

1 right?

2 MR. DOUGLAS: Yes, Your Honor.

3 MR. CARR: Yes, Your Honor.

4 THE COURT: Okay. Thank you. Bring the jury in.  
5 We'll do the charge conference after the noon recess so you  
6 have time to look over the charge.

7 (Jury in 11:32 a.m.)

8 THE COURT: Ladies and Gentlemen, the evidence in  
9 the case has concluded and both counsel and I are surprised  
10 at how quickly it moved this morning so I must tell you that  
11 we're not prepared to charge you or to--for you to hear the  
12 arguments until tomorrow morning so this means it's a very  
13 short day today and I'm going to be adjourning the trial  
14 until nine o'clock tomorrow morning at which time I will  
15 give you a copy of the charge and read the charge to you  
16 with all the instructions you need to decide the case,  
17 following which you will hear the closing arguments of the  
18 parties and you'll have the case to deliberate. Until that  
19 time, as you leave today, I must instruct you once again  
20 that you are not to discuss the case among yourselves or  
21 with anyone with whom you may have contact. Should a third  
22 party attempt to discuss the case with you, you have to walk  
23 away from them and advise you've been instructed not to do  
24 so and if they persist, please let me know through Court  
25 Security--a Court Security Officer or Debbie at the earliest



1 opportunity.

2 Please do not review any media coverage of the case,  
3 that would be television, radio, or in the newspaper.

4 Don't attempt any independent research, either by search  
5 engines on your phone or on your tablet or at the library.

6 We thank you for your attention. I apologize for the  
7 brevity of today's session. I know it's an imposition on  
8 your personal time, on you work time. It's--trials develop  
9 and I think all of us gave you our best estimates on  
10 everything so I apologize that our estimate yesterday was  
11 off, but it was all based on the best knowledge we had at  
12 the time.

13 So with that apology, please be careful driving home and  
14 thank you for your patience and attention and your  
15 dedication to the oath you've taken as jurors here and we'll  
16 see you tomorrow morning ready to start at nine o'clock.  
17 All right. Leave your notebooks face down on your chairs.

18 (Jury out 11:35 a.m.)

19 THE COURT: All right. My suggestion would be that  
20 we recess for lunch, give you a copy of the verdict form and  
21 special interrogatories and would you be prepared--I have a  
22 12:15 hearing. I don't know how long it will last. I think  
23 it's probably going to be close to a half an hour in another  
24 matter. Therefore, I would say let's resume at one o'clock  
25 if that's okay with all of you.

1 MR. DOUGLAS: Yes, Your Honor.

2 MR. CARR: It is, Your Honor, and I would state  
3 that I've spoken to the Government. Mr. Hissam actually  
4 will be speaking regarding the charge for the defense but I  
5 understand the Government does not wish for the  
6 consciousness of guilt instruction to be given and I don't  
7 believe that either side has any issues at the moment with  
8 the charge and so we would otherwise expect that not to be  
9 prolonged.

10 MR. DOUGLAS: That is correct, Your Honor, and  
11 Mr. Bernard will be speaking for the Government on the  
12 charge.

13 THE COURT: Okay. Well we have to have a charge  
14 conference even if it's very brief but that's fine with me.  
15 I appreciate your letting me know.

16 MR. CARR: Yes, Your Honor.

17 THE COURT: Okay. You might have to wait a couple  
18 minutes to make sure. Actually it's coming out to you with  
19 the very careful eye of Mr. McDaniel. I haven't looked at  
20 it but I did look at it previously so I think this final  
21 version is pretty close to what we had talked about. Yeah.  
22 And I think you'll recognize it.

23 MR. CARR: Your Honor, I only mention that for the  
24 Court's schedule as far as the anticipated disagreements.

25 THE COURT: Pardon?

1 MR. CARR: Your Honor, I only mention that for  
2 the--

3 THE COURT: Oh, I understand. Well I only  
4 scheduled one case today and it was at 12:15 so it's--oh,  
5 two. Sorry we have two. Oh, 12:30. Well I--I'll still be  
6 ready by one o'clock.

7 MR. CARR: Yes, Your Honor.

8 THE COURT: Okay. No problem. Court stands in  
9 recess until one o'clock.

10 (Recess from 11:40 a.m., until 1:05 p.m.)

11 THE COURT: Thank you. Please be seated. All  
12 right. This is the charge conference in the case of United  
13 States of America versus James L. Laurita, Jr. and I had  
14 asked Mr. McDaniel to please provide you with draft number  
15 two and also the verdict form.

16 I think the only change we made in draft number two  
17 other than pagination was to take out the consciousness of  
18 guilt instruction so I'm happy to hear from the Government  
19 if you're ready.

20 MR. BERNARD: Yes, Your Honor.

21 THE COURT: Okay. Mr. Bernard.

22 MR. BERNARD: Thank you, Your Honor. I don't know  
23 if the Court want's to proceed page by page--

24 THE COURT: Well sometimes it's the best way.  
25 We've got the pages numbered, we've got the lines numbered

1 and we can move right through it.

2 MR. BERNARD: Sure. No objection to page one, Your  
3 Honor.

4 THE COURT: Okay. If you want to just take me to  
5 where you have your first objection.

6 MR. BERNARD: The first page would be page ten.  
7 It's not necessarily an objection.

8 THE COURT: Okay.

9 MR. BERNARD: It is the title, and hopefully the  
10 copy I have is the correct draft, but I think it's draft  
11 three, even though it says draft two, where it says other  
12 crimes, wrongs or acts. I think it would be more  
13 appropriate just to put other acts of the defendant.

14 THE COURT: Okay.

15 MR. BERNARD: I don't think there is evidence of  
16 crimes or necessarily wrongs.

17 THE COURT: I'm sure there's no objection from the  
18 defendant?

19 MR. HISSAM: That's right, Your Honor.

20 THE COURT: All right. Thank you. The Court will  
21 make the--other acts so we'll redact crimes, wrongs or.  
22 Thank you.

23 MR. BERNARD: You're welcome, Your Honor. Then the  
24 next comment would be page twenty-eight so I don't know if  
25 the defense has anything before that or not.

1 THE COURT: Well I'll take theirs separately.

2 MR. BERNARD: All right. So--

3 THE COURT: I think that makes for a cleaner  
4 records sometimes.

5 MR. BERNARD: That's fine, Your Honor. The--and I  
6 know the Government submitted the instructions on each of  
7 these and so if there's any fault, it would be with the  
8 Government but--

9 THE COURT: No, we did--we did make some  
10 modifications--if it's about willfully, we did make some  
11 modifications.

12 MR. BERNARD: Okay. And i think the further  
13 modification because willfully appears I believe four times  
14 in the instructions. Two times it's differently--it's  
15 different and two other times it's--there's probably two  
16 versions of willfully.

17 THE COURT: Well we don't want that, that's for  
18 sure. Sorry about that.

19 MR. BERNARD: I think it would be more  
20 appropriate--it's a more appropriate statement of the law if  
21 you look at page thirty-two, Your Honor, numbers eighteen  
22 through twenty-two and it carries over to page thirty-three,  
23 lines one through five. I think they're basically saying  
24 the same thing but that's probably a more appropriate  
25 definition of willfully so I would--I would respectfully

1 request we strike on page twenty-eight lines three through  
2 ten--or twelve and replace them with the--the willful  
3 language.

4 THE COURT: Okay. What in particular is different  
5 rather than strike the whole thing. I have a suspicion a  
6 lot of this is still the same.

7 MR. BERNARD: Let's see. You could probably--the  
8 sentence on line six at page twenty-eight it says to  
9 establish that the defendant acted willfully, the Government  
10 does not have to prove that he was aware of the statutory  
11 requirements and prohibitions of the Federal Election  
12 Campaign Act or that he purposely violated the Act and if  
13 you go over to page thirty-two, it is very similar but that  
14 added language--

15 THE COURT: It's more generic.

16 MR. BERNARD: Yes. I think more generic is the  
17 more appropriate way and the more proper standard under the  
18 law. I think that additional language in there, they're  
19 going to wonder, wait a minute, why are there different--why  
20 is there an addition here versus at a later definition so  
21 the more generic I think is--is more appropriate.

22 THE COURT: This is as to Count One, right?

23 MR. BERNARD: Yes. Yes, Your Honor.

24 THE COURT: Okay. On page twenty-eight?

25 MR. BERNARD: Yes.

1           THE COURT: What if we were to add, to establish  
2 that the defendant acted willfully as to Count One or put as  
3 to Count One, to establish that the defendant acted  
4 willfully and then made that specific as to each of the  
5 counts because willfully is an element of every count,  
6 correct?

7           MR. BERNARD: It is. I think it's the--all I'm  
8 saying is that additional language that goes specific  
9 there--

10          THE COURT: Uh-huh (yes).

11          MR. BERNARD: I think later on when they see  
12 willfully in a more generic sense, it's like, well wait a  
13 minute, you know, why is it--why is it generic here--I think  
14 if it's generic as to Count One, it says the same thing. If  
15 we simply go with the sentence on page thirty-two, to  
16 establish that the defendant, and this is at line  
17 twenty-one, to establish that the defendant acted willfully  
18 the Government does not have to prove that he was aware of  
19 the specific provisions of the law that is charged with  
20 violating and that's all you need. We can take out that  
21 other sentence and just replace it with--with that more  
22 generic one and again that way the definition would be  
23 consistent and there's one other place where it gets  
24 specific and as I was looking at these I said that's going  
25 to create--at least in my mind it creates a little bit of an

1 issue and a conflict.

2 THE COURT: Okay. Let me hear from the defendant  
3 as to that one before we move on.

4 MR. BERNARD: Sure.

5 THE COURT: Thank you.

6 MR. HISSAM: Sure, Your Honor. We believe the  
7 instruction on page twenty-eight, if was modified as the  
8 Court suggested by saying as to Count One would be clear and  
9 the meaning would be the same between page twenty-eight and  
10 page thirty-two so we believe the Court's suggested  
11 modification would address the Government's concern.

12 THE COURT: All right. Thank you. I'm trying to  
13 find it as to--I don't see it is to Count Two and I don't  
14 see it as to Count Three or Count Four. Is it Six, Seven  
15 and Eight? Is that where we come up next?

16 MR. BERNARD: It would actually be to Count Three,  
17 Your Honor.

18 THE COURT: Oh, really. Okay. What page?

19 MR. BERNARD: Page thirty-two. Begins at  
20 thirty-two, goes over to thirty-three.

21 THE COURT: Oh, I thought you were okay with that.

22 MR. BERNARD: I'm sorry, did you say too specific,  
23 Your Honor? I'm sorry. I--

24 THE COURT: I was looking for the other one that  
25 you thought was too specific.



1           MR. BERNARD: I will find that. That is actually  
2 on page--bear with me, Your Honor.

3           THE COURT: Forty-one? Forty-one, where it says to  
4 establish that the defendant acted willfully, the Government  
5 does not have to prove that he was aware--

6           MR. BERNARD: Yes.

7           THE COURT: It's the same language as to Count One,  
8 right?

9           MR. BERNARD: Right. Those two are the same but  
10 then the other two counts are a little bit different. I  
11 just--I think it's a correct statement of the law, the more  
12 generic statement and I think one or the other has to be  
13 consistent. I think it's more consistent then to stay  
14 generic rather than to go specific as to different counts  
15 but it's the same standard.

16           THE COURT: As to One, Six, Seven and Eight, we are  
17 talking about the Federal Election Campaign Act, right? And  
18 in fact in the elements we do mention the Federal Election  
19 Commission.

20           MR. BERNARD: Technically I think we're talking  
21 about 1001, Your Honor.

22           THE COURT: Yeah. Okay. But what we're saying, if  
23 you look at page forty, to establish the first element the  
24 Government must prove beyond a reasonable doubt that a false  
25 statement was made in a matter within the jurisdiction of

1 the Federal Election Commission and then we're saying that  
2 the false statement was material to the Federal Election  
3 Commission and then we're saying, as to willfully, to  
4 establish that the defendant acted willfully the Government  
5 does not have to prove that he was aware of the statutory  
6 requirements and prohibition of the Federal Election  
7 Campaign Act or that he purposely violated the Act. Is  
8 there any other way in which the Government would be  
9 connecting or proving up the issue of willfulness that you  
10 think would mislead the jury by mentioning--by mention of  
11 the Act?

12 MR. BERNARD: I don't--you know, Your Honor, when I  
13 was looking at it, thinking as a juror who is looking at the  
14 instructions and looks at the definition of willfully, the  
15 only question I had is that going to raise a question in the  
16 juror's mind, a question that doesn't need to be raised  
17 because a more generic definition of willfully is  
18 sufficient, sufficient under the law and there's no reason  
19 to add that in those two--to add that to the term willfully  
20 in those two counts and then later on with other actions  
21 where at the same standards it's willfully, I think it  
22 raises a question and it risks confusion. That's all I'm  
23 saying. I don't know that it's inappropriate to put it  
24 there but the problem is it's the same standard necessarily  
25 for all four counts, maybe not the same specific elements so

1 I think it's--I think it's appropriate to be consistent  
2 throughout the instructions with a definition. That's all.

3 THE COURT: All right. Okay. I understand what  
4 you're saying and let me give it consideration.

5 MR. BERNARD: Okay.

6 THE COURT: I think that we're--I think we can do  
7 that. I have had a problem with this instruction from the  
8 beginning and we did work with it, only for the reason that  
9 I could see the jury coming back with questions and the more  
10 generic the worse in a way.

11 MR. BERNARD: Sometimes in a way, Your Honor, but I  
12 think it's--definitely if it's inconsistent I think there's  
13 a chance it will raise a question.

14 THE COURT: I'm not sure it's inconsistent. The  
15 question I guess is as to Count Two and Three and Four, do  
16 they specifically involve the Federal Election Commission or  
17 does it involve the Federal Election Campaign Act? And if  
18 they do maybe I should just add it to all four, but I don't  
19 think that's what you charged him under in Counts Two, Three  
20 and Four.

21 MR. BERNARD: Two, Three and Four are under the  
22 Campaign Act.

23 THE COURT: Oh, they are?

24 MR. BERNARD: Yes.

25 THE COURT: Okay. Well what if we just added it to

1 everything?

2 MR. BERNARD: We can do that, Your Honor. As long  
3 as it's consistent, I think that would be fine.

4 THE COURT: Okay.

5 MR. HISSAM: We believe that would be appropriate,  
6 Your Honor.

7 THE COURT: Okay.

8 MR. BERNARD: Thank you. Your Honor.

9 THE COURT: All right. What's your next one?

10 MR. BERNARD: I'll have to shift around because I  
11 think I had some of my flags with regard to that willful but  
12 I think the next--

13 THE COURT: Beyond willfully, because I know you  
14 have four--that would be two objections or four objections,  
15 depending on--

16 MR. BERNARD: But I won't revisit those because I  
17 think we've addressed that. The next page would be page  
18 thirty-seven and it is--this is maybe an addition to make so  
19 I think it would be most appropriate to add something  
20 between lines ten and eleven to explain that there's no  
21 Count Five because we go from Four to Six, explain there's  
22 no Count Five and that the jury does not have to concern  
23 themselves with a Count Five.

24 THE COURT: Okay. So for purposes of continuity  
25 there's no Count Five for the jury to consider.

1 MR. BERNARD: Correct, Your Honor.

2 THE COURT: Any objection?

3 MR. HISSAM: No, Your Honor.

4 THE COURT: Thank you.

5 MR. BERNARD: I believe--give me one moment, Your  
6 Honor, that might be--

7 THE COURT: Certainly.

8 MR. BERNARD: That's it, Your Honor. Thank you.

9 THE COURT: Okay. Before I hear from the  
10 defendant, you know this so much better than I do, I know  
11 Counts Six, Seven and Eight all reference quarterly reports  
12 filed with the FEC, correct?

13 MR. HISSAM: Yes, Your Honor.

14 MR. BERNARD: Yes, Your Honor.

15 THE COURT: Okay. And I don't think that there's  
16 any reference that--with that specificity in Counts Two,  
17 Three or Four. Am I correct? Those really--with dates,  
18 amounts and calendar years?

19 MR. DOUGLAS: That's correct, Your Honor.

20 THE COURT: Okay. And Count--Count One covers the  
21 gamut?

22 MR. BERNARD: The scheme, Your Honor.

23 THE COURT: All right. I'm just thinking out loud.  
24 I'll make a decision and let you all know. What about the  
25 defendant?

1 MR. HISSAM: Your Honor, if I may remain here?

2 THE COURT: Yes.

3 MR. HISSAM: We only have one, Your Honor. On page  
4 one, line twenty-four we believe it would be confusing to  
5 refer to a seven count indictment given that the verdict  
6 form and the instructions refer to eight counts so we  
7 believe that could just be changed to read--starting--

8 THE COURT: To the indictment?

9 MR. HISSAM: To each count of the indictment  
10 perhaps.

11 THE COURT: Uh-huh (yes). No problem. Does the  
12 Government object?

13 MR. BERNARD: No objection, Your Honor.

14 THE COURT: Okay.

15 MR. HISSAM: No remaining objections from the  
16 defendant, Your Honor.

17 THE COURT: All right. Thank you. All right.  
18 What about the verdict form and special interrogatories?

19 MR. BERNARD: Your Honor, the United States has no  
20 objections or additions to that. Thank you.

21 MR. HISSAM: Your Honor, the defendant has no  
22 objections or additions either.

23 THE COURT: All right. Thank you. I will just  
24 tell you adding unanimously and adding guilty beyond a  
25 reasonable doubt, I'm just literally trying to account for

1 issues that under new Supreme Court law anybody ever says we  
2 need to look behind the verdict, somebody didn't understand  
3 so I know you don't typically see it this way but I'm  
4 literally trying to just account for some of that.

5 MR. BERNARD: No objection, Your Honor.

6 THE COURT: All right. Thank you. If there's  
7 nothing else then I think that concludes the  
8 instructions--the charge. I know the generic version works  
9 and if the defendant doesn't have any problem with it, I'm  
10 fine with it. I think it was the idea that I didn't have  
11 any theory of the case instructions from either side and I  
12 just thought well maybe we could be a little more specific.

13 MR. HISSAM: Yes, Your Honor. I was just going to  
14 add that we did not intend to submit one.

15 THE COURT: Right. I figured at this point you  
16 didn't. So if--that was the only reason. I don't have a  
17 problem with going back to the generic if the defendant  
18 doesn't object, just using the generic throughout the whole  
19 thing. You're going to argue the Act throughout. I feel  
20 certain about that.

21 Okay. Thank you. If my Law Clerk changes my mind I'll  
22 let you know. So the Court stands adjourned until nine a.m.  
23 tomorrow morning. Obviously I'll be here before that if you  
24 need to raise anything. One hour per side still as you've  
25 been thinking about it and a fair beginning and all of that.

1 We'll have Richard here tomorrow to offer technological help  
2 if you're using PowerPoint or any instruction--well actually  
3 your exhibits, you know how to do that but if there's  
4 anything beyond that that you need assistance, Richard will  
5 be here beforehand to help you set up.

6 MR. CARR: Yes, Your Honor, and in speaking to the  
7 Government, I believe I can speak for them, that we both  
8 very much apologize for the change in the estimate that  
9 occurred last night as far as testimony is concerned.

10 THE COURT: No problem. As I used to say to juries  
11 about malpractice, it's an art, not a science; the same  
12 thing with regard to trials. Okay.

13 MR. CARR: Thank you, Your Honor.

14 THE COURT: Court stands adjourned. Thank you.

15 (Trial was adjourned at 1:25 p.m.)  
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CERTIFICATE

I, Linda L. Bachman, Official Reporter of the United States District Court for the Northern District of West Virginia, do hereby certify that the foregoing is a true and correct transcript of the proceedings had in the above styled action on January 31, 2018, as reported by me by stenomask.

I certify that the transcript fees and format comply with those prescribed by the Court and the Judicial Conference of the United States.

Given under my hand this 14th day of March, 2018.

/s/ Linda L. Bachman  
Linda L. Bachman, CCR, CVR-M  
Official Reporter, United States  
District Court for the Northern  
District of West Virginia

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